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Dear Judge:

This writing sample is an excerpt from a current draft of my student note. The *California Law Review* accepts some student notes for publication, so this spring I submitted the note for consideration, and it was accepted for publication in its February 2024 issue. So, while it will go through several more rounds of editing by myself and others, this draft has not been edited by anybody other than me.

To provide a shorter writing sample, I have not included the entire draft, which is roughly 70 pages. Instead I have included Part III of the note, which is about 13 pages. This section analyzes how the 2018 amendments to class action settlement approval criteria in Rule 23(e) have been implemented differently in the Fourth and Ninth Circuits. I have also included the abstract of my note, to provide some additional context for the excerpt. If you would like me to supplement these excerpts with a fuller draft of the note, I would be happy to provide that material.

Sincerely,

Matt Veldman

Abstract:

Class action lawsuits are among the most divisive topics in American civil law. Past efforts by the Advisory Committee on Civil Rules to reform substantial parts of Rule 23 have been met with such controversy that more recently, the Advisory Committee has elected to pursue more modest reforms. The most recent amendments to Rule 23 went into effect in 2018, and were widely considered to maintain this modest focus, by focusing on procedural aspects of class actions like notice requirements and judicial approval of proposed settlements. In tackling settlement approval, the Advisory Committee wanted to unify the practice of the various circuits, which had all developed their own sets of factors of varying length to evaluate fairness, reasonableness, and adequacy of a proposed class settlement. The final product was a pared down set of criteria that focused on the "core concerns" of settlement approval.

This Note has two related aims: to explain the development and implementation of the amended Rule 23(e)(2) settlement criteria, and to situate the amendment process within broader class action debates about regulation vs. compensation as proper goals of class actions. I argue that the approach to rulemaking taken by the Advisory Committee, which prioritizes process values like consensus-building above other goals, is unlikely to lead to effective rulemaking in the highly contentious area of class actions. Using courts' diverging interpretations of the new rule as illustrations, I show that there are real consequences to a consensus-based rulemaking approach, including in this case sacrificing the very uniformity that the Advisory Committee had hoped to achieve with the new criteria. Finally, the Note concludes by arguing that despite the supposedly modest focus of the amendment, when the subtlety of the rule change is unraveled and its proper interpretation is recognized, the amended criteria do more than merely codify existing practice, as has been argued by others. Instead they quietly embrace the compensatory view in the class action debates, with potentially far-reaching consequences for the regulatory power of small-value consumer class actions.

Part III

It is still early, so the law of course will continue to develop. Many circuit courts have not yet had the opportunity to authoritatively address the question. But, the reception so far in the courts that have interpreted the new factors tends to show that the Advisory Committee's goal of harmonizing and simplifying the varied circuit settlement criteria has not been realized in the few

years since the amendments were adopted. Instead, courts have gone on divergent paths in responding to the amended rule. While courts in some circuits have held that they wholly adopt the new criteria, and so courts should now focus on the "core concerns" that the Advisory Committee notes identify, others have used the criteria not to replace but to supplement their existing circuit factors, folding them into the settlement inquiry. And still others have declined to transition to the new factors at all, interpreting the new factors to so largely overlap with the circuit's old factor list that courts can just continue using its old factors to evaluate class settlements. In short, this proliferation of different methods appears to have foiled the Advisory Committee's hope of paring down circuits' factors and unifying settlement analysis.

The extent to which this presents a serious problem is debatable, and the longer-term consequences for class action settlements remain to be seen. But already in these developments we can see some of the specific pitfalls predicted during the amendment process being manifested: one public commenter suggested that courts may take certain language in the Committee Note (that the factors are not meant to displace any particular circuit factor) as license to keep using their old factors, and that is exactly what some courts have done.[1] This is not to suggest that the Advisory Committee was somehow naive to these risks, as many of these possibilities were among the very concerns identified from the earliest discussions by members of the Rule 23 Subcommittee.[2] Clearly the consensus within the Advisory Committee was that the changes were worth pursuing despite these risks. While these early developments do not necessarily suggest permanent divergence, they do suggest that any uniformity must come either

[1] *See* Public Comment of Lawyers for Civil Justice, *supra* note 129.

[2] Recall the Subcommittee member who expressed that under either alternative then proposed, "judges could continue to do exactly what they did before the amendment." Rule 23 Subcommittee Report, *supra* note 89, at 107.

from further clarifying rulemaking, or from an authoritative Supreme Court interpretation of the rule's meaning, both of which are likely to take many more years to come to pass.[3]

In this Part I demonstrate how the fears expressed by many about how courts would receive the new rule came to fruition. Courts must decide as a matter of first impression how to interpret the new rule, and, because of ambiguity and conflicting language in the text and the Committee Note, they have plausibly arrived at quite different interpretations of the rule. Using the Fourth Circuit and Ninth Circuit as case studies, I show how one court can plausibly claim that the rule does nothing more than "codif[y] existing practice"[4] while another can just as plausibly argue that a rule change means a rule *change*, and that by creating a set of "core concerns," the rulemakers intended Rule 23 to now require a deeper level of scrutiny of class action settlements. Instead of uniformity, what could prove to be a new split among the circuits is emerging, where at least one court of appeals has held that the amended criteria raise the scrutiny required of judges before approving a class action settlement, while another has found that the criteria impose no new obligations on district court judges, and that a presumption of validity can still apply to class action settlement agreements. If this divergence among circuit approval practices proves durable, the amendment could have the effect of actually increasing the incentives of plaintiffs lawyers to forum shop given the real divergence in scrutiny they could expect on a class settlement proposal.

A. The Differing Reception Among the Circuits

a. The Fourth Circuit Approach

[3] Convergence by the circuits themselves is not impossible, but given the experience with circuits' development of their circuit factors seems unlikely and in any case would be likely to take even longer to come to pass.
[4] NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:48 (6th ed.).

On one end, there is the Fourth Circuit, which so far has held that the 2018 amendments impose no new obligations on settlement approval practice. Before the 2018 amendments, the Fourth Circuit had applied two sets of factors to the settlement approval inquiry, one to analyze a settlement's fairness, the other focusing on the settlement's adequacy.[5] The four factors for determining fairness are: "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation."[6] The five factors for assessing adequacy are: "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement."[7]

The Fourth Circuit position post-2018 amendments has developed over several cases. First, in *In re Lumber Liquidators Chinese-Manufactured Flooring Products*, decided in 2020, the Fourth Circuit acknowledged that Rule 23(e)(2) was amended in 2018 to specify factors for courts to focus on in evaluating the fairness, reasonableness, and adequacy of a class action settlement. It then noted that the new factors "almost completely overlap" with the existing Fourth Circuit factors, and so the outcome would be the same under either set of factors.[8] Ultimately the *Lumber Liquidators* court applied the Fourth Circuit factors to the case to maintain consistency with the approach that the district court had taken, because the district court

[5] This approach differs from that of many other circuits, where one set of factors was used to assess fairness, reasonableness, and adequacy together rather than treating them as discrete inquiries.
[6] In re Jiffy Lube Securities Litigation, 927 F. 2d 155, 159 (4th Cir. 1991).
[7] *Id.*
[8] 952 F. 3d 471, 484 n.8 (4th Cir. 2020).

gave final approval prior to the adoption of the 2018 amendments and so evaluated under the circuit's factors. Arguably, then, the court's statement about the outcome being the same under either factors was dicta, but over subsequent cases it has developed into Fourth Circuit law.

In *Herrera v. Charlotte School of Law, LLC*, decided the same year, the court made a similar statement to that of *Lumber Liquidators*, albeit in an unpublished, nonbinding opinion. The *Herrera* court recognized that the Federal Rules of Civil Procedure had been amended and that Rule 23(e)(2) now "sets forth factors for the district court to assess in evaluating fairness, reasonableness, and adequacy."[9] "Recognizing that, this Court continues to apply its own standards" because the analysis is the same under either approach.[10] Here the court quoted the *Lumber Liquidators* language about the standards almost completely overlapping with the Fourth Circuit factors.[11]

In a later case, *1988 Trust for Allen Children Dated 8/8/88 v. Banner Life Insurance Company*, decided in 2022, the Fourth Circuit described the "fairness analysis" required "[u]nder Rule 23(e)(2)," but did not make reference to the 2018 amendments or the factors now identified in Rule 23(e)(2).[12] Instead the court pointed to the Fourth Circuit factors for determining fairness and adequacy identified by *Jiffy Lube* and *Lumber Liquidators* as the required guidance for the settlement inquiry.[13] The court in *Banner Life Insurance* did not make the same explicit statement as did *Lumber Liquidators* and *Herrera* about the Fourth Circuit continuing to apply

[9] 818 Fed. Appx. 165, 176 n.4 (4th Cir. 2020).
[10] *Id.*
[11] *Id.*
[12] 1988 Trust for Allen Children Dated 8/8/88 v. Banner Life Insurance Company, 28 F. 4th 513, 525 (4th Cir. 2022).
[13] *Id.*

its own standards due to the overlap between them and the Rule 23(e)(2) factors, but regardless it proceeded to review the settlement under the Fourth Circuit factors.[14]

While the cases described so far have either largely ignored the new Rule 23(e)(2) factors or have acknowledged them but continued to apply the prior circuit factors, in another case the Fourth Circuit took a third approach. In *McAdams v. Robinson*, the lower court had approved a class action settlement by reviewing under the *Jiffy Lube* factor tests.[15] When reviewing that approval, the Fourth Circuit articulated the requirements for settlement approval in terms of the 23(e)(2) factors, while also identifying the five-factor *Jiffy Lube* adequacy test as relevant to the settlement's adequacy.[16] Though the lower court couched its analysis exclusively in terms of the *Jiffy Lube* factors, the appeals court nevertheless found that the judge "considered the three relevant Rule 23(e)(2) criteria."[17] This appellate panel did not appear to exhibit a preference for how the district court articulated the required settlement approval inquiry, content that the district court's findings under the *Jiffy Lube* factors could be slotted to fit the Rule 23(e)(2) factors.[18]

Several district courts in the Fourth Circuit have taken the "complete[] overlap" identified by the *Lumber Liquidators* court as, if not instruction to, then at least invitation to, continue framing their settlement approval analysis around the *Jiffy Lube* factors instead of the new Rule 23(e)(2) factors. One district court, citing the "completely overlap" statement from *Lumber Liquidators*, concluded that "[t]herefore, I shall consider the factors as outlined in pre-2018 class

[14] *Id.* at 525-27.
[15] *See* Robinson v. Nationstar Mortgage LLC, 2020 WL 8256177, at *2-3 (D. Md. Dec. 11, 2020).
[16] McAdams v. Robinson, 26 F. 4th 149, 159 (4th Cir. 2022).
[17] *Id.* The panel noted that there was no "agreement required to be identified" in the case, negating the need to analyze the fourth 23(e)(2) factor. The panel also cited as relevant that the magistrate judge had weighted the five *Jiffy Lube* adequacy factors. *Id.*
[18] This suggests that the *Lumber Liquidators* court may have been onto something when it suggested that the Rule 23(e)(2) factors had significant overlap with existing circuit law.

action cases.[19] And so despite acknowledging the 2018 amendments and enumerating the Rule 23(e)(2) factors in its opinion, the district court framed its analysis in terms of the *Jiffy Lube* factors.[20]

On one level, there is some variation in the approaches of these circuit panels and district courts in the Fourth Circuit. This could indicate that what I am describing is nothing more than some necessary messiness involved in the early days of interpreting and implementing a change to a familiar legal standard, before courts coalesce around a unified interpretation. On another level, though, it seems clear that despite whatever minor differences in application they involve, these cases share a sense that the amended Rule 23(e)(2) factors do not change anything of substance in terms of what inquiry district courts should be conducting. Whether the courts analyzed a settlement only under the *Jiffy Lube* factors, slotted the district court's analysis in to fit the 23(e)(2) factors, or combined the old and new factor lists in some way, there is a shared sense among them that the difference is not particularly important because nothing much has changed with the amended settlement criteria.

b. The Ninth Circuit Approach

While courts in the Fourth Circuit have stated that they will continue to use the Fourth Circuit's own factors to evaluate class settlements, given the "almost complete[] overlap" between them and the revised 23(e)(2) factors,[21] the Ninth Circuit has taken a markedly different approach. Like the Fourth Circuit, the Ninth Circuit had developed its own list of factors to consider when assessing whether a settlement was fair, reasonable, and adequate, known as the *Hanlon* or *Staton* factors:

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[19] Donaldson v. Primary Residential Mortgage, Inc., 2021 WL 2187013, at *4 (D. Md. 2021).
[20] *Id.*
[21] *In re Lumber Liquidators*, 952 F. 3d at 484 n.8.

> [T]he strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.[22]

But unlike the Fourth Circuit, it has found enough daylight between the old factors and the new ones to hold that there are meaningful differences, and that courts must apply the new factors. And in fact, in *Briseño v. Henderson* it reversed a district court's decision to take the Fourth Circuit approach of favoring the old factors. The district court had evaluated a class action settlement using the *Staton* factors instead of applying the Rule 23(e)(2) factors because it held that "[t]here is substantial overlap between [Rule 23(e)(2) factors] and the *Staton* factors."[23] The Ninth Circuit held that this was a reversible error. Despite the fact that "many of the *Staton* factors fall within the ambit of the revised Rule 23(e)," the court found that the two factor lists were not entirely coextensive.[24] Specifically, under Rule 23(e)(2) district courts "*must* now consider 'the terms of any proposed award of attorney's fees' when determining whether 'the relief provided for the class is adequate.'"[25] The court held that the plain language of the rule states that "a court must examine whether the attorneys' fees arrangement shortchanges the class."[26] "In other words, the new Rule 23(e) makes clear that courts must balance" the proposed attorneys' fees with the relief provided for the class in making its adequacy determination of the

[22] Hanlon v. Chrysler Corp., 150 F. 3d 1011, 1026 (9th Cir. 1998); Staton v. Boeing Co., 327 F. 3d 938, 959 (9th Cir. 2003).
[23] Briseño v. Henderson, 998 F. 3d 1014, 1021 (9th Cir. 2021).
[24] *Id.* at 1026.
[25] *Id.* at 1024 (emphasis added) (quoting FED. R. CIV. P. 23(e)(2)(C)(iii)).
[26] *Id.*

settlement as a whole.[27] Without deciding that it would always be an abuse of discretion for a district court to apply the *Staton* factors instead of the revised 23(e)(2) factors in approving a settlement, the court concluded that "we must follow the law that Congress enacted. And that means scrutinizing the fee arrangement for potential collusion or unfairness to the class."[28]

The court in *Briseño* went further, holding that the amended Rule 23(e)(2) requires "heightened scrutiny" of class action settlements to assess whether the settlement has fairly and adequately divided funds between the plaintiffs' attorneys and the class members.[29] Prior to the amendment, the Ninth Circuit had followed developments in other circuits in only requiring that district courts conduct a "more probing inquiry than may normally be required" of settlements that are reached before class certification.[30] Settlements reached pre-class certification are thought to be more susceptible to collusion between plaintiffs' counsel and the defendant at the expense of the class, and thus in need of a watchful judge to look out for the class.[31]

And so many courts, the Ninth Circuit included, developed circuit law that required district courts to apply heightened scrutiny for pre-class certification settlements, when the potential for collusion was at its highest.[32] The Ninth Circuit explained what signs of possible collusion district courts should be looking out for when scrutinizing pre-class certification

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[27] *Id.*
[28] *Id.* at 1026.
[29] *Id.* at 1025.
[30] Hanlon v. Chrysler Corp., 150 F. 3d 1011, 1026 (9th Cir. 1998).
[31] At the pre-class certification stage, the court has not approved class counsel, who would owe fiduciary duties to the class, and the attorneys have not yet devoted substantial amounts of time and money to the case. *Briseño*, 998 F. 3d at 1024. For these reasons there's a fear that plaintiffs' counsel will be tempted to strike a quick deal with the defendants, selling out the class's claims by settling cheaply in exchange for higher attorneys' fees, and that the defendants will be happy to go along with plaintiffs' counsel to quickly and cheaply resolve the case. *Id.* In theory, these worries about collusion at the expense of class members fade as the case progresses past class certification, since then plaintiffs' counsel owe fiduciary duties to the absent class members and have devoted more resources to the case, incentivizing them to push for the maximum feasible recovery. *Id.* at 1024-25.
[32] "Several circuits have held that settlement approval that takes place prior to formal class certification requires a higher standard of fairness…. Because settlement class actions present unique due process concerns for absent class members, we agree with our sister circuits and adopt this standard as our own." *Hanlon*, 150 F. 3d at 1026.

settlements in *In re Bluetooth Headset Products Liability Litigation*.[33] Unsurprisingly, the warning signs all have to do with attorneys' fees and the incentives created by them: "(1) when counsel receive[s] a disproportionate distribution of the settlement; (2) when the parties negotiate a 'clear sailing arrangement' under which the defendant agrees not to challenge a request for an agreed-upon attorney's fee; and (3) when the agreement contains a 'kicker' or 'reverter' clause that returns unawarded fees to the defendant, rather than the class."[34] *Bluetooth*'s prescription to look for signs in negotiated fee provisions that class members were being sold out unequivocally applied to pre-class certification settlements, but it was an open question whether the same scrutiny should ever be applied to post-class certification settlements.[35] *Briseño* answered that question affirmatively. The answer, the court said, flows from the amended Rule 23(e)(2)(C): the text of the rule now requires district courts to scrutinize the terms of attorney's fees awards, and "[n]othing in the Rule's text suggests that this requirement applies only to pre-certification settlements."[36] While the threat of collusion may be highest before class certification, the potential for plaintiffs' counsel to elevate their interest over that of the class remains throughout class litigation.[37] Scrutinizing the terms of attorney's fee provisions may be the best that can be done in uncovering subtle signs of collusion between plaintiffs and defense counsel, and the *Briseño* court found that by including this new factor in the text of the Rule, Congress had collusion in mind: "Congress sought to end this practice by changing the text of Rule 23(e)(2)(C)."[38]

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[33] 654 F. 3d 935 (9th Cir. 2011).
[34] *Briseño*, 998 F. 3d at 1023 (quoting *Bluetooth*, 654 F. 3d at 947).
[35] "*Bluetooth* therefore left open a question no subsequent case has answered: whether district courts are required to look for these subtle warning signs in cases, like this one, that are settled *after* formal class certification." *Campbell v. Facebook, Inc.*, 951 F. 3d 1106, 1125-26 (9th Cir. 2020).
[36] *Briseño*, 998 F. 3d at 1024.
[37] *Id.* at 1025.
[38] *Id.*

i. Presumptions of validity of class action settlements

As the Ninth Circuit understands it, the heightened scrutiny required by Rule 23(e)(2) has a further implication—rather than the presumption of validity or fairness of class action settlements applied by judges in many circuits, in the Ninth Circuit class settlements must now be presumed *invalid*. "Rule 23(e)(2) assumes that a class action settlement is invalid."[39] Again, the answer flows from the amended Rule 23(e)(2), which requires considering whether the settlement proposal was negotiated at arms' length as just one of four factors a district court must consider, and satisfying one factor does not justify an overall presumption of validity.[40]

Picking up the thread on presumptions of validity, the court in *Roes, 1-2* was careful to qualify that the assumption of invalidity is not a radical departure for the Ninth Circuit, pointing out that the Ninth Circuit has "never endorsed applying a broad presumption of fairness…."[41] And the *Briseño* court made clear that the presumption of invalidity "does not demand disfavoring settlement" or displacing the "strong judicial policy that favors settlements" in class actions.[42] The presumption of invalidity, then, seems primarily aimed at encouraging a thorough inquiry by the district court that satisfies Rule 23(e)(2) rather than at imposing a separate requirement. It does not demand disfavor of class settlements, but it does call for courts to conduct a "searching inquiry" required by Rule 23(e)(2) and requires them to make distinct

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[39] *Id.* at 1030.

[40] *See* Roes, 1-2 v. SFBSC Management, LLC, 944 F. 3d 1035, 1049 n. 12 (9th Cir. 2019) (Rule 23(e)(2) "A presumption of fairness was commonly applied by district courts in our circuit prior to Congress' 2018 codification of standards for evaluating whether a proposed class settlement is 'fair, reasonable, and adequate.' … [I]t is very likely inappropriate under the standards now codified in Rule 23(e)(2). Rule 23(e)(2) now identifies 'whether … the proposal was negotiated at arm's length as one of four factors that courts must consider and does not suggest that an affirmative answer to that one question creates a favorable presumption on review of the other three." Some courts, by comparison, have articulated a presumption of validity to arms-length-negotiated settlements. *See, e.g.*, Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F. 3d 96, 116 (2d Cir. 2005) ("A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" (quoting MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.42 (1995)).

[41] *Roes, 1-2*, 944 F. 3d at 1049.

[42] *Briseño*, 998 F. 3d at 1031.

findings on each factor to be weighed rather than allowing affirmative findings on one to create presumptions on others.[43] And that entails making factual findings that the factors support approving the settlement: "[A] conclusory statement, without any further analysis, that 'the settlement is the product of serious, non-collusive, arm's length negotiations and was reached after mediation with an experienced mediator at the Ninth Circuit' is insufficient."[44]

c. Parsing the differences between the Fourth and Ninth Circuits

As should be plain at this point, the Ninth Circuit's approach, at least on its face, appears to be quite different from that of the Fourth Circuit. The Fourth Circuit has adopted a reading of Rule 23(e)(2) by which the amendment does not change, but merely rearticulates, the existing law of settlement approval. This reading has also found support from other sources, including

[43] *Roes, 1-2*, 944 F. 3d at 1049. This may point to one reason the Fourth and Ninth Circuits have come out so differently on this question. There is an interpretive question of how much of the sentence the word "only" applies to in "only on finding that it is fair, reasonable, and adequate after considering whether…" One way of reading the revised Rule 23(e)(2) is that *only* applies to "finding that it is fair, reasonable, and adequate," but not to "after considering whether," so that the core requirement is a finding of fairness, reasonableness, and adequacy, and considering the factors is merely there to provide guidance to courts as to how to make the core findings. Another way of reading the text is to read *only* to implicitly modify the latter phrase too, so that the instruction ("*only* after considering whether") would require findings on these specific factors. Reading it in the first way could lead to something like the Fourth Circuit's interpretation, while reading it in the second way could lead to something like the Ninth Circuit's. The Ninth Circuit put it this way in *Roes, 1-2*: the four factors are factors that courts "must consider" and an affirmative finding on one does not "create[] a favorable presumption on review of the other three." *Id.* at 1049 n. 12. This approach does not have quite the forcefulness of the ALI's original proposal to require affirmative findings on each of the prongs, treating them as elements to be satisfied rather than factors to be weighed, but it does move the inquiry in that direction.

[44] *Id.* at 1050 n. 13. One interesting wrinkle about the reception of the Rule 23(e)(2) amendments in the Ninth Circuit is that despite the holdings in cases like *Briseño* and *Roes, 1-2*, some district courts since *Briseño* continue to apply the *Hanlon* factors rather than the Rule 23(e)(2) factors to frame their settlement approval analysis, while noting separately that they will also scrutinize the fee arrangement for potential collusion under *Briseño*. *See, e.g.* Hashemi v. Bosley, Inc., 2022 WL 18278431, *2-3 (November 21, 2022) (describing the legal standard through citation to *Hanlon* but also conducting a separate inquiry for collusion under what the court called the *Briseño* factors); Smith v. Kaiser Foundation Hospitals, 2021 WL 2433955, *5-6 (S.D. Cal. June 15, 2021) (same). *But see* Peterson v. Alaska Communications Systems Group, Inc., 2022 WL 788399 (D. Alaska March 15, 2022) (describing the legal standard under Rule 23(e)(2) and the *Hanlon* factors and evaluating settlement proposal under both sets of factors). Thus it appears that despite the *Briseño* court's best efforts, courts in the Ninth Circuit are sometimes still exhibiting preference for their own circuit's prior articulation of the law over the articulation made by Congress in the Federal Rules. And, even where the courts are reckoning with the amended rule, they are often doing so by reference to their own circuit court's gloss on the rule rather than the rule itself.

influential class action treatises and in certain places in the Advisory Committee Note to the 2018 amendments.[45]

The Ninth Circuit has instead adopted an interpretation of the Rule that imposes new scrutiny requirements on district courts when considering whether to approve a proposed class action settlement. The magnitude of the difference can be debated, since possible collusion in class settlements has long been on the radar of federal courts before the 2018 amendments, including in cases like the Fourth Circuit's *Jiffy Lube*, from which the Fourth Circuit draws its settlement approval factor list.[46] What sets the Ninth Circuit approach apart, though, is that possible collusion is not merely on the radar of the district court, as has long been the case, but is instead a core component of the settlement approval inquiry that must be independently addressed by the district court. Rather than wait for an objector to object to the settlement and raise the collusion argument on appeal, district courts in the Ninth Circuit must make their own specific findings, in the first instance, that assesses the attorney's fee against the relief for the class and scans for signs of collusion. Failing to "investigate or adequately address the economic reality of the settlement relief" and address the *Briseño* factors is an abuse of discretion in the Ninth Circuit.[47] And the Ninth Circuit is serious about courts making specific factual findings rather than conclusory statements: "the district court must do more than acknowledge that

[45] See NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:48 (6th ed.) ("Because the 2018 amendments codified existing practice, they are unlikely to generate a significant change in the settlement process or outcome."); "Overall, these factors focus on comparable considerations…. The goal of this amendment is not to displace any factor…" FED. R. CIV. P. 23(e)(2) advisory committee's note to 2018 amendment.

[46] "The court determined that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion…." In re Jiffy Lube Securities Litigation, 927 F. 2d 155, 158-59 (4th Cir. 1991); "The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *Id.* at 158.

[47] McKinney-Drobnis v. Oreshack, 16 F. 4th 594, 610 (9th Cir. 2021).

warning-sign provisions exist and then conclude that they are not dispositive without further apparent scrutiny."[48]

All of this is not to say that a Fourth Circuit district judge couldn't reach the same conclusions by means other than an interpretation of Rule 23(e)(2), and so still reject a proposed settlement as collusive. But framing matters. In the Fourth Circuit, there exists a general encouragement to consider possible collusion, but district courts do not have the independent obligation to rigorously scrutinize specific elements of a settlement proposal that courts in the Ninth Circuit do. In one circuit there remains a presumption of fairness in favor of class settlements and an open-ended factor balancing test to approve a class settlement. In the other, proposed settlements begin from a place of invalidity and courts must make specific, non-conclusory findings to satisfy the Rule 23(e)(2) criteria. And specifically, courts must "balance the 'proposed award of attorney's fees' vis-a-vis the 'relief provided for the class'" in determining the adequacy of the settlement.[49] The difference is meaningful enough that, all else equal, a class settlement proposal faces more of an uphill battle in the Ninth Circuit, and a class action attorney thinking about where to file a case—especially small value consumer class actions where relief is notoriously difficult to get to class members—might look ahead toward settlement approval and take it into account if she had the choice between filing in the Ninth Circuit or elsewhere.

[48] *Id.*

[49] Briseño v. Henderson, 998 F. 3d 1014, 1024 (9th Cir. 2021). As the *Briseño* court noted, "we never explicitly mandated consideration of the terms of attorney's fees in the *Hanlon/Staton* factors." *Id.* at 1023.

Applicant Details

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Law Review/Journal	**No**
Moot Court Experience	**Yes**
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June 12, 2023

The Honorable Chief Justice Juan R. Sánchez
United States District Judge for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
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Re: Application for Judicial Clerkship for 2024-2025 Term

Dear Chief Judge Sánchez,

I am excited to apply for the Judicial Clerkship position in your Chambers. My background is somewhat unorthodox, with diverse experiences including over a year of legal-based work before law school and a few years in various finance roles. I would like to highlight the diversity of my experience as well as the very specific and analytical-based skill set it has afforded me. My public defense internship played a pivotal role in shaping my career trajectory. Initially drawn to transactional business law due to my background, I have now developed a keen interest in litigation. Throughout my career, I have consistently sought out new challenges and opportunities for personal and professional growth. I have specifically chosen to have a year-long judicial externship during the 2023-2024 school term to be best prepared for a clerkship after graduation. My sister-in-law bet me that after my internship with the public defender's office, I would end up there for my career. She is right, and I would like to do so with Your Honor's guidance but also hopefully after a clerkship. I believe that I would be a better public servant if I were to be able to get an inside understanding of best practices and a behind the scenes view of the judicial system before I start to form a way or strategy of practice. I see this position as an opportunity to continue my professional growth as a lawyer and to contribute to the important work of your Chambers.

My undergraduate education at Rutgers Newark provided me with a strong foundation in critical thinking and analysis, which has been invaluable in my legal studies. I am currently attending Washington and Lee School of Law and anticipate graduating in May of 2024. Throughout my academic career, I have demonstrated a passion for learning and a commitment to excellence. In addition, I have gained practical experience through internships, legal clinics, working with clients, and participating in every competition that Washington and Lee offers.

I am excited about my upcoming externship position in the Chambers of the Honorable Judge Dorsey, where I hope to further develop my skills and prepare for a Judicial Clerkship after graduation. I believe that my curiosity, diligence, attention to detail despite deadlines or any other pressured situation, legal skills, and dedication to the law make me an ideal candidate for the Judicial Clerkship position in Your Honor's Chambers.

Thank you for considering my application. I look forward to the opportunity to discuss my qualifications further.

Sincerely,

Artem Volynsky

ARTEM VOLYNSKY
Tenafly, NJ 07670 • 917-645-2020 • volynsky.a24@law.wlu.edu

EDUCATION

WASHINGTON AND LEE SCHOOL OF LAW, J.D. Candidate — Class of 2024
GPA 3.3
Activities Extern for the Honorable Judge Dorsey (Full Year 2023-2024)
Kirgis Fellow – mentor for 1L Class of 2025
Business & Law Association – Vice President of Public Relations
Phi Alpha Delta Law Fraternity
Semifinalist, Client Counseling Competition (Spring 2023)
Quarterfinalist, Mediation Competition (Spring 2023)
Participant, ABA Regional Client Counseling Competition (Invite only) (Spring 2023)
Participant, John W. Davis Oral Advocacy Competition (Moot Court) (Fall 2022)
Participant, Robert J. Grey, Jr. Negotiations Competition (Fall 2022)

RUTGERS, THE STATE UNIVERSITY OF NJ — May 2017
Rutgers Business School – Newark, B.S. in Finance and Management Information Systems
Honors Cum Laude
Activities Minor in Liberal Arts (Honors College)
Analyst for Derivative Trading for Student Managed Fund
J&J Case Competitions

EXPERIENCE

MORGAN & MORGAN — Summer 2023
Intern, New York, NY
Was promised the chance to work on: at least one case which is in active litigation, one case which is being negotiated/settled, and one case which would be prepared for litigation.

NEW JERSEY OFFICE OF THE PUBLIC DEFENDER — Summer 2022
Intern, Salem County, NJ
Advocated for clients who need immediate representation. Worked directly under Deputy Public Defender on trial preparation, multiple motions for dismals of indictments, appeals for detainment decisions by the Court, and preparations for plea deal negotiations. Collaborated with Chief Investigator and Investigation Team to interview, intake, and prepare clients for meetings with attorneys. Various other adhoc projects completed for all attorneys in the office.

WORLD PEACE TRACTS — Summer 2022
Intern, Remote
Working with an international team to collaborate with the International Criminal Court (ICC) in writing a memo and assembling evidence in order to push forward the investigation regarding Nigeria. The atrocities will be investigated as crimes against humanity committed by Boko Haram and the Nigerian security forces.

GEBO GROUP — 2020 – 2021
Compliance Officer, Jersey City, NJ
Implemented and oversaw development and maintenance of Anti-Money Laundering (BSA/AML) programs in accordance with FinCEN BSA regulations and the USA Patriot Act for institutional over-the-counter principal-to-principal digital asset trading firm. Performed know your customer (KYC) and enhanced due diligence processes on all onboarded counterparties, reporting and escalating suspicious activities to authorities within mandated timelines.

J.P. MORGAN CHASE & Co. — 2016 – 2019
Finance and Business Management Analyst Development Program (Formerly FADP), New York, NY

Second Rotation – Corporate Investment Bank, Earnings & Competitor Analysis Team
Collaborated with multiple teams across seven business lines within the Investment Bank (IB) to curate performance narrative for C-Suite executives and respond to internal and external IB-related inquiries. Compiled in-depth analysis of competitor earnings for C-Suite and senior management. Helped write CFO, IB, and Investor Relations commentary on IB performance.

First Rotation – Chief Investments Office & Treasury, Liquidity Control
Created and integrated a system to track and sign off on changes that affect the firm's Liquidity Coverage Ratio (LCR) disclosure. Provided commentary for daily LCR variances across North America Treasury entities, sent to Federal Bank to explain variances over a certain threshold. Forecasted short-term cash flow. Managed international team updates of standards of procedures. Assisted with presentations for quarterly and annual public disclosure, including 10K and 10Q.

Summer Internship – Corporate Investment Banking, BM– Emerging Markets Credit Trading
Designed a real-time funding aggregation tool in Excel for traders to accurately assess their funding costs, net interest income, and risk weighted asset costs. Assessed use of Market Data Services and reduced total subscription service costs by $150,000 annually. Created a tool that enabled business managers to assess Sovereign Bond Market Share.

FINKEL ASSOCIATES LLP 2015 – 2016
Clerk and Research Assistant, Brooklyn, NY
Researched and executed multiple projects associated with capital ventures, national and international. Projects within the medical field and oil exploration in connecting potential markets and venture capital firms. Entrusted with managing the transition of all back-office documents and client information to new database software.

OTHER PROJECTS

CAMPUS CUBS 2019 – 2021
Founder
Non-profit connecting university campuses and local animal shelters to bring shelter animals to campuses, helping socialize and find a home for animals and de-stress college students. Will attempt to restart this during fall 2022.

PERSONAL

Skills	Advanced Microsoft Suite, Bloomberg, Cap IQ, Tableau
Languages	Fluent in Russian; conversational in Ukrainian
Hobbies	Sushi Connoisseur, reading, hiking, playing sports, tinkering with cars
Service	W& University – Hosting Ukrainian Families, Achilles Run NYC
Fun Fact	2006 Time Person of the Year

Print Date: 05/19/2023
Page: 1 of 3
Student: Artem Volynsky

WASHINGTON AND LEE
UNIVERSITY
Lexington, Virginia 24450-2116

SSN:	XXX-XX-4820	**Entry Date:**	08/30/2021
Date of Birth:	06/23/XXXX	**Academic Level:**	Law

2021-2022 Law Fall
08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B	4.00	4.00	12.00	
LAW 140	CONTRACTS	B+	4.00	4.00	13.32	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 165	LEGAL WRITING I	B+	2.00	2.00	6.66	
LAW 190	TORTS	B+	4.00	4.00	13.32	
	Term GPA: 3.238	**Totals:**	14.50	14.50	46.96	
	Cumulative GPA: 3.238	**Totals:**	14.50	14.50	46.97	

2021-2022 Law Spring
01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A-	4.00	4.00	14.68	
LAW 150	CRIMINAL LAW	A	3.00	3.00	12.00	
LAW 163	LEGAL RESEARCH	A	0.50	0.50	2.00	
LAW 166	LEGAL WRITING II	B-	2.00	2.00	5.34	
LAW 179	PROPERTY	B+	4.00	4.00	13.32	
LAW 195	TRANSNATIONAL LAW	B-	3.00	3.00	8.01	
	Term GPA: 3.354	**Totals:**	16.50	16.50	55.35	
	Cumulative GPA: 3.300	**Totals:**	31.00	31.00	102.32	

2021-2022 Law Summer
05/22/2022 - 08/13/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 888	SUMMER INTERNSHIP	CR	1.00	1.00	0.00	
	Term GPA: 0.000	**Totals:**	1.00	1.00	0.00	
	Cumulative GPA: 3.300	**Totals:**	32.00	32.00	102.32	

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Student: Artem Volynsky

WASHINGTON AND LEE
UNIVERSITY
Lexington, Virginia 24450-2116

2022-2023 Law Fall
08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 618	Insider Trading Seminar	A-	2.00	2.00	7.34	
LAW 685	Evidence	B+	3.00	3.00	9.99	
LAW 708	Financial Literacy For Lawyers	A-	1.00	1.00	3.67	
LAW 713	Sales	B+	3.00	3.00	9.99	
LAW 716	Business Associations	B	4.00	4.00	12.00	
LAW 827	Start-Up Business Practicum	A-	2.00	2.00	7.34	
LAW 882	Negotiating a Joint Venture in China	A	1.00	1.00	4.00	
	Term GPA: 3.395	**Totals:**	16.00	16.00	54.33	
	Cumulative GPA: 3.332	**Totals:**	48.00	48.00	156.64	

2022-2023 Law Spring
01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 701	Administrative Law	B	3.00	3.00	9.00	
LAW 767	Electronic Discovery	A	1.00	1.00	4.00	
LAW 827	Start-Up Business Practicum	A-	3.00	3.00	11.01	
LAW 893	Bankruptcy Practicum	B+	4.00	4.00	13.32	
LAW 917	Client Counseling Competition	CR	1.00	1.00	0.00	
	Term GPA: 3.452	**Totals:**	15.00	15.00	48.34	
	Cumulative GPA: 3.360	**Totals:**	63.00	63.00	204.98	

2023-2024 Law Fall
08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 707B	Skills Immersion: Business		2.00	0.00	0.00	
LAW 739	Federal White Collar Crime		3.00	0.00	0.00	
LAW 746	Cannabis Law		3.00	0.00	0.00	
LAW 865	Negotiations and Conflict Resolution Practicum		2.00	0.00	0.00	
LAW 942	State Judicial Externship		2.00	0.00	0.00	
LAW 942FP	State Judicial Externship: Field Placement		2.00	0.00	0.00	
	Term GPA: 0.000	**Totals:**	14.00	0.00	0.00	
	Cumulative GPA: 3.360	**Totals:**	63.00	63.00	204.98	

Print Date: 05/19/2023
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WASHINGTON AND LEE
UNIVERSITY
Lexington, Virginia 24450-2116

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	63.00	63.00	3.360
External:	0.00	0.00	
Overall:	63.00	63.00	3.360

Program: Law

End of Official Transcript

WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.
The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.
The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commence (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	4.33 prior to Fall 2009
A	4.00	Superior.
A-	3.67	
B+	3.33	
B	3.00	Good.
B-	2.67	
C+	2.33	
C	2.00	Fair.
C-	1.67	
D+	1.33	
D	1.00	Marginal.
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).

E Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 *and* a cumulative GPA of at least 2.000 *and* no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

Numerical Grade*	Letter Grade**	Points	Description
4.0	A	4.00	
	A-	3.67	
3.5		3.50	
	B+	3.33	
3.0	B	3.00	
	B-	2.67	
2.5		2.50	
	C+	2.33	
2.0	C	2.00	
	C-	1.67	
1.5		1.50	This grade eliminated after Class of 1990.
	D+	1.33	
1.0	D	1.00	A grade of D or higher in each required course is necessary for graduation.
	D-	0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5		0.50	This grade eliminated after the Class of 1990.
0.0	F	0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.
** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu

University Registrar

220707

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

May 28, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

This is to recommend one of my students, Artem Volynsky, who is applying for a clerkship in your chambers. Mr. Volynsky will graduate from Washington and Lee University School of Law in 2024. He has taken two of my courses: Torts, in his first year, and Administrative Law, in his second year. In addition, he and I have spoken numerous times outside of class about his course of study and professional goals. Based on these considerable contacts, I have a good sense of his abilities and potential for success in a challenging clerkship.

I recommend Mr. Volynsky enthusiastically. In Torts, he was unfailingly prepared for class discussion and participated at a high level throughout the semester. He demonstrated a fine ability, unusual in beginning students, to separate the important from the trivial in the assigned readings, and to raise important questions about legal doctrine and the role of policy. He was particularly strong in re-creating the parties' arguments in the assigned cases and evaluating them for their strengths and weaknesses. When I required the class to read Benjamin Cardozo's book, The Nature of the Judicial Process, Mr. Volynsky drew perceptive connections between Cardozo's commentary and the torts cases we had studied. I could not have asked for a more engaged or intellectually active first-year student.

This year, Mr. Volynsky brought the same focus and careful thinking to Administrative Law. The course can be quite daunting for students, especially the Supreme Court's separation-of-powers jurisprudence. Mr. Volynsky rose to the challenge quite brilliantly, offering perceptive analysis of the differing approaches of the Justices and the implications of separation-of-powers doctrine for administrative law and procedure. Again, his participation in class was first-rate.

I also recommend Mr. Volynsky simply as a person. In all of my contacts with him, he has shown a positive personality, great energy, and a quick sense of humor. He clearly gets along well with his professors and peers, who value his decency and collegiality. I am confident that he would bring the same collaborative spirit to any professional working environment.

For these reasons, I highly recommend Artem Volynsky. He has the maturity, intellect, and judgment that will enable him to excel as a judicial clerk and later in the practice of law. I know he would do his utmost to meet your expectations0

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Very truly yours,

Brian C. Murchison
Charles S. Rowe Professor of Law

KEVIN WALKER
401 West Franklin Avenue
Collingswood, New Jersey 08107
Tel. No. (856) 310-3487

May 28, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am pleased to write this letter of recommendation for Artem Volynsky.

Artem worked as a legal intern for the New Jersey Office of the Public Defender, Salem Trial Region, during the summer of 2022. At the time, I was the head of the Salem office. (I have since retired from the agency.)

Artem was a tremendous asset. His work was uniformly praised by the Salem staff. He assisted me on two major projects. One involved drafting a legal memorandum that formed the basis of a motion to dismiss a second-degree conspiracy count in State v. Artaj Northrop, a major narcotics prosecution. The motion was successful, in large part because of the case law Artem uncovered during his painstaking research.

Artem also assisted me in State v. King Johnson. The defendant there was charged with brandishing a handgun in the parking lot of a convenience store and then, prior to the arrival of the police, secreting the firearm in a small stockroom in the establishment. Artem visited the scene and then carefully dissected statements, both of police officers and lay witnesses, captured on body-worn camera (BWC) footage. His analysis disclosed significant inconsistencies in the complainant's allegations. Although the client was initially detained, based on the seriousness of the charge, a motion to dismiss the indictment was filed, expanding on Artem's initial analysis, and the prosecution was compelled to downgrade the charge.

Artem has an excellent work ethic. He was always eager to assist — he is what I would characterize as a "self-starter," an important quality in a law clerk — and he engaged enthusiastically in his assignments. He made himself available to all our attorneys. In one case, he was instrumental in helping an attorney secure an acquittal at trial.

The case, State v. Marquis Smith, turned on the cross-examination of police witnesses. Artem assisted the attorney in crafting the cross-examinations and in mining footage from multiple BWCs to develop critical inconsistencies in the state's case. As the attorney conducted the questioning, Artem displayed, in real time, the BWC footage that undermined their testimony. Anyone who has handled physical evidence or audio-visuals in the presence of a jury appreciates the pitfalls of a sloppy presentation. Artem's crisp and professional handling of the footage from numerous cameras showed a defense in full command of the facts and substantially bolstered the assigned attorney's credibility during closing arguments.

On a personal note, it was a pleasure having Artem in the office. He was pleasant and affable and helped nurture an atmosphere of collegiality, so critical in a small office like Salem. He also had substantial client contact, often accompanying attorneys during their visits to the county jail and developing an easy rapport with the inmates.

I can recommend Artem Volynsky without reservation. He is a diligent, hard-working and conscientious young man, and I have no doubt he will serve the legal profession with great distinction.

If you require anything further, please do not hesitate to contact me at (856) 310-3487.

Sincerely,
Kevin Walker
Formerly Deputy in Charge
Salem Trial Region
Office of the Public Defender

Joshua A.T. Fairfield
William Bain Family Professor of Law

Telephone: (540) 458-8529
Email: fairfieldj@wlu.edu

April 17, 2023

Artem Volynsky Letter of Recommendation

Dear Sir or Madam:

I write to offer my strong support for Artem Volynsky. Artem is a powerful and effective attorney, whose attention to detail and focused work ethic make him stand out among the students of his year.

I learned to know Artem in multiple classes, most recently my Sales course. Artem was the most prepared student in the class. He brought a wealth of common and business sense to his questions. He knew the materials inside and out. He clearly put more time in to not only gain a technically correct understanding of the law, but a robust one as well. When I would alter the facts of a hypothetical to test whether the students understood the real-world implications of a rule, Artem was the one who would step in. He served as a real-world check to the more complicated hypotheticals posed by other students – often a multi-step implausible chain of events would be met with Artem's confident response.

This is consistent with what I know of Artem's background. He is driven to succeed and to achieve. He works extraordinarily hard and generates results. He does not balk at obstacles, but plans a path around them and puts in the time necessary to make the change happen. Artem is no stranger to adversity. He sees setbacks as an opportunity to excel, and has made excellence a habit.

On a personal note, Artem is a calm, persuasive, and assured lawyer. He will be enormously convincing as an attorney, and effective and efficient in producing legal arguments that have been proofed against counterarguments. Please do not hesitate to contact me via email at fairfieldj@wlu.edu, or on my personal cell at 540.490.0457, if I can advance his candidacy in any way.

Warmest regards,

Joshua Fairfield

Sydney Lewis Hall · Lexington, Virginia 24450-0303

WRITING SAMPLE – ARTEM VOLYNSKY

This was drafted during my internship in the Summer of 2022 when I interned for the New Jersey's Office of the Public Defender under Kevin Walker. I received permission to use this as a writing sample.

Hon. Linda L. Lawhun, P.J.Cr.
Superior Court of New Jersey
92 Market Street
Salem, New Jersey 08079

Re: State of New Jersey v. King Johnson
Salem County Indictment No. XXXXXXX-I

Dear Judge Lawhun:

Please accept this letter-brief in lieu of a more formal submission in support of defendant King Johnson's standing to challenge the unconstitutional search of the Sunoco convenience store by the Salem Police.

LEGAL ARGUMENT

KING JOHNSON POSSESSES STANDING TO CHALLENGE THE SEARCH OF THE CONVENIENCE STORE

Many cases in New Jersey extending to the state Supreme Court have reiterated that per Article 1, Paragraph 7 of the New Jersey Constitution "A criminal defendant is entitled to bring a motion to suppress evidence obtained in an unlawful search and seizure if he has a proprietary, possessory or participatory interest in either the place searched or the property seized. New Jersey has retained the automatic standing rule." *State v. Randolph*, 159 A.3d 394, 397 (2017). *Randolph* is one of several Supreme Court cases that started with *State v. Alston*, wherein the Court made clear that the Fourth Amendment of the Federal Constitution does not adequately protect New Jersey citizens from unlawful searches and seizures, and that New Jersey's

interpretation of the law is more robust and "consonant with the interpretation of the plain meaning of Article 1, Paragraph 7." *State v. Alston*, 440 A.2d 1311, 1319 (1981). This explains the departure from the "traditional" (federal) approach which dictates that "expectations of privacy are entitled to protection, the analysis is informed by historical understandings of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted." *Carpenter v. United States*, 138 S. Ct. 2206, 2208 (2018). The New Jersey Constitution expands this antiquated approach, providing "automatic standing" for Johnson to challenge the constitutionality of the search that Salem Police conducted on the Sunoco convenience store.

The expanded New Jersey understanding of searches and seizures "explain[s] this to mean as well that a defendant has [automatic] standing if he 'is charged with an offense in which possession of the seized evidence at the time of the contested search is an essential element of guilt.'" *State v. Baum*, 972 A.2d 1127, 1135 (2009) (quoting *Alston*, at 1311 (1981)). The word "automatic" is used multiple times within the above-mentioned case to refer to the type of standing that a defendant is accorded under the circumstances that apply in our case. *Id*. at 1130 (discussing granting automatic standing to any defendant to move to suppress evidence when it was derived from a warrantless search). For brevity, the statement above simply incorporated the word "automatic" to illustrate the Supreme Court of New Jersey's view on standing in such a case.

There are a few exceptions to New Jersey's automatic standing doctrine. First, a defendant will not have standing to object to the search or seizure of abandoned property. *State v. Carvajal*, 996 A.2d 1029, 1034 (2010) (quoting *Johnson supra*, 940 A.2d 1185). Second, a

defendant will not have standing to challenge a search conducted on property on which he/she was trespassing. *Randolph*, 159 A.3d at 405 (citing *State v. Brown*, 83 A.3d 45 (2014)). Third, a defendant will not have standing to challenge a search or seizure on the property from which he/she was lawfully evicted. *Id*. (*see generally State v. Hinton*, 78 A.3d 553 (2013)). Importantly, the burden is on the State to challenge a defendant's automatic standing by arguing one of these exceptions applies. *Randolph*, 159 A.3d at 405. None of these exceptions apply to our case. Indeed, the State did not posit a challenge to Johnson's automatic standing on grounds of any of these exceptions. Therefore, Johnson is entitled to automatic standing to challenge the unconstitutional search and seizure that occurred in the Sunoco convenience store.

The Sunoco station has gas pumps that are not in use, however, the convenience store is active and regularly operated by a clerk named "Sam." It is hence not abandoned. Salem Police responded to the Sunoco several times that night. The first time, Johnson was on the property and the officers failed to lawfully inform him that he was trespassing. Moreover, Johnson was not in violation of any lawful trespass orders from the property owner. No other repercussions resulted from the officers being on the scene. By Sam's comments it is fair to infer that Johnson was a regular customer and was friendly with Sam. Sam never indicated that Johnson was unwelcome on the property and would ever have been trespassing by being there. In fact, during the alleged confrontation in the store, the complaining witness was asked to leave the store, not Johnson. Therefore, the second exception does not apply either. The Sunoco convenience store is a public place, and hence Johnson could not have been evicted as he was not a resident of the establishment. Hence, the last exception is also not relevant. Therefore, none of the three exceptions are relevant to Johnson. As a matter of law, Johnson should have

automatic standing to challenge this unconstitutional search and seizure.

In anticipation of the State filing a memo in opposition to automatic standing, the following will address any arguments that may be brought. The State may attempt to reference a few unpublished opinions in which the Court did not grant automatic standing, but these cases are wholly distinguishable and are hence irrelevant to Johnson being lawfully granted standing. One such case includes an exception to the automatic standing rule, it is when the defendant failed to prove that he had a participatory interest in the package that was involved in the case. *State v. Ghaznavi*, No. A-1034-19T1, 2020 N.J. Super. Unpub. LEXIS 2261, at *15 (Super. Ct. App. Div. Nov. 24, 2020) (finding that with those circumstances the lower court was correct in finding that automatic standing does not apply to such a case). In a similar case in front of this Court, the State relied on the case of *State v. Rustin* to try to argue that automatic standing should not be allowed. This case is also wholly differentiated by the facts and charges here. In *Rustin*, the evidence recovered by the search was a video and did not play a role in the charges that were brought by the State. *State v. Rustin*, Nos. A-2241-18T2, A-2270-18T2, A-2311-18T2, 2020 N.J. Super. Unpub. LEXIS 497, at *5–6 (Super. Ct. App. Div. Mar. 11, 2020). In the case at hand, the place where the gun was recovered was a store open to the public whereas in *Rustin* it was a private home owned by another individual. *Id*. The differentiating factor is incredibly important because in the case at hand the gun was found in a convenience store open to the public, in which Johnson was not trespassing, and not a private home. The officers questioned everyone they could at the scene when they first arrived and nobody claimed to see a weapon of any kind. The complaining witness who claimed Johnson was armed maintained she was terrified. Yet, she then followed Johnson to his car and pursued him in her friend's car.

Seeing someone with a gun, then thinking the best course of action is to follow them while claiming they are terrified is preposterous. Simply put, her actions do not align with her testimony. None of these facts remotely align with the two aforementioned cases and make a very questionable case for the State founded on an unconstitutional search and seizure. Based on the facts of our case, the automatic standing rules as interpreted based on the New Jersey Constitution, and their elaboration through accompanying case law, Johnson has automatic standing to challenge the search of the Sunoco convenience store.

The analogy of "fruit from a poisonous tree" is apt here. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Allowing evidence that was collected from an unconstitutional search and seizure to stand, and not allowing Johnson standing to challenge the constitutionality of such, would be a grave injustice.

CONCLUSION

For the reasons stated above the defendant, Johnson, respectfully request that he be allowed standing to challenge the unconstitutional search of the Sunoco convenience store.

Respectfully submitted,

cc: XXXXXXX, DAG
ZXXXXXX, DAG

Applicant Details

First Name	**Simone**
Last Name	**Wallk**
Citizenship Status	**U. S. Citizen**
Email Address	**Swallk@jd24.law.harvard.edu**
Address	**Address** Street **1110 N Lake Shore Dr, Apt 4S** City **Chicago** State/Territory **Illinois** Zip **60611** Country **United States**
Contact Phone Number	**3129255122**

Applicant Education

BA/BS From	**Princeton University**
Date of BA/BS	**May 2021**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard Civil Rights-Civil Liberties Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Wagstaff, Brandy
brandy.wagstaff@gmail.com
301-785-7562
Ardalan, Sabrineh
sardalan@law.harvard.edu
617-384-7504
Renan, Daphna
drenan@law.harvard.edu
617-495-8218

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Simone Wallk

41 Burnside Ave Apt. 2, Somerville, MA 02144 | 312.925.5122 | swallk@jd24.law.harvard.edu

June 12, 2023

The Honorable Juan R. Sánchez
United States District Court, Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sánchez:

I write to express my interest in the next available clerkship in your chambers after I graduate from Harvard Law School in 2024. I am a rising third-year student pursuing a career in civil rights litigation.

Enclosed please find my resume, law school transcript, and writing sample. You will also receive recommendation letters from the following people, who would welcome any inquiries in the meantime:

- Prof. Sabrineh Ardalan, Harvard Law School, sardalan@law.harvard.edu, (617) 384-7504
- Prof. Daphna Renan, Harvard Law School, drenan@law.harvard.edu, (617) 495-8218
- Brandy Wagstaff, U.S. Department of Justice, brandy.wagstaff@usdoj.gov, (202) 598-5238

I have worked to sharpen my research and writing skills throughout law school. Through the Harvard Immigration and Refugee Clinic, I researched and drafted an amicus brief for the Ninth Circuit and an appellate brief for the Board of Immigration Appeals. As a research assistant to Professors Daphna Renan and Niko Bowie, I completed several projects on concepts of judicial review in the founding and Civil War eras. I have also substantively edited legal scholarship by professors, practitioners, and students as an editor on the *Harvard Civil Rights-Civil Liberties Law Review*.

If there is any additional information that would be helpful to you, I would be happy to provide it. Thank you for your time and consideration.

Sincerely,
Simone Wallk

Enclosures

Simone Wallk

41 Burnside Ave Apt. 2, Somerville, MA 02144 | 312.925.5122 | swallk@jd24.law.harvard.edu

EDUCATION

Harvard Law School, *Juris Doctor Candidate*, Cambridge, MA — May 2024

Honors: Dean's Scholar Prizes in Civil Procedure; Immigration and Refugee Advocacy; Harvard Immigration and Refugee Clinic
James Vorenberg Equal Justice Summer Fellowship

Activities: *Harvard Civil Rights–Civil Liberties Law Review*, Lead Outside Articles Editor
Professors Niko Bowie and Daphna Renan, Research Assistant
Women's Law Association, Public Interest Committee

Princeton University, *Bachelor of Arts with highest honors in English*, Princeton, NJ — June 2021

Honors: Phi Beta Kappa
Shapiro Prize for Academic Excellence
Kenneth Christopher Harris '65 Memorial Award (for contribution to ethical, spiritual, and religious life)

Activities: *Nassau Literary Review*, Essay Editor and Staff Writer

Thesis: *Haunted Histories: Torture and Trauma in Muriel and The Battle of Algiers* (received University Center for Human Values Thesis Prize, Class of 1859 Prize, and André Maman Prize)

EXPERIENCE

Ali & Lockwood, *Law Clerk*, Washington, D.C. — July – August 2023
Research and draft briefs for solitary confinement and access to counsel class actions.

Public Citizen Litigation Group, *Law Clerk*, Washington, D.C. — May – July 2023
Research and draft briefs for appellate public interest litigation on administrative law, discrimination, and access to courts.

Harvard Immigration and Refugee Advocacy Clinic, *Student Attorney*, Cambridge, MA — Spring 2023
Researched and drafted appellate brief for detained immigrant before the Board of Immigration Appeals. Researched and filed amicus brief in the Ninth Circuit on behalf of international law scholars. Drafted portions of federal civil rights complaint regarding access to counsel, language access, and strip search policies of immigration detention facility.

MacArthur Justice Center, *Law Clerk*, Chicago, IL — January 2023
Wrote responses to motions to dismiss class action and § 1983 police shooting suit, addressing standing, certification of interlocutory appeals, and proper defendants for state tort law and *Monell* claims.

U.S. Department of Justice, Civil Rights Division, *Law Clerk*, Washington, D.C. — Summer 2022
Drafted responses to defense motions. Authored one-pager and co-authored memorandum distributed to Assistant U.S. Attorneys on multiplicity and duplicity issues in human trafficking indictments. Authored memoranda and researched novel and complex legal issues in criminal law and criminal procedure. Assisted with victim interviews.

Prison Legal Assistance Project, *Student Attorney and Director of Legal Resources*, Cambridge, MA — Fall 2021 – Present
Represent clients at parole hearings and submit memoranda to the parole board based on client interviews, trial records, and institutional records. Prepare clients for hearings. Advocate for modification of parole conditions. Provide legal research assistance to incarcerated people in weekly intake shifts. Collaborate with staff attorneys to produce sample motions.

Princeton Asylum Project, *Student Coordinator and Researcher*, Princeton, NJ — 2019 – 2021
Coordinated 30 students supporting asylum cases from Catholic Charities Community Services. Identified expert witnesses, assisted experts in writing affidavits, and wrote country conditions indices in 18 cases. Recruited and trained 25 members.

Princeton Religion and Resettlement Project, *Oral History Researcher*, Washington, D.C. — Summer 2019, Summer 2021
Engaged in community outreach and interviewed 15 refugees on migration experience and effectiveness of resettlement resources. Developed best practices guide on outreach, interpretation, and confidentiality.

PERSONAL

Interests include international film, contemporary fiction, and backcountry hiking. Conversational French and Hebrew.

Harvard Law School

Date of Issue: June 7, 2023
Not valid unless signed and sealed
Page 1 / 2

Record of: Simone A Wallk
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 4 Cohen, I. Glenn * Dean's Scholar Prize	H*	4
1001	Contracts 4 Elhauge, Einer	P	4
1006	First Year Legal Research and Writing 4A Medley, Shayna	H	2
1004	Property 4 Singer, Joseph	H	4
1005	Torts 4 Lazarus, Richard	H	4

Fall 2021 Total Credits: 18

Winter 2022 Term: January 04 - January 21

1051	Negotiation Workshop Franklin, Morgan	CR	3

Winter 2022 Total Credits: 3

Spring 2022 Term: February 01 - May 13

1024	Constitutional Law 4 Minow, Martha	H	4
1002	Criminal Law 4 Crespo, Andrew	P	4
1006	First Year Legal Research and Writing 4A Medley, Shayna	P	2
2596	Legal History Workshop: Intimacy and the Law Lvovsky, Anna	H	2
1003	Legislation and Regulation 4 Renan, Daphna	H	4

Spring 2022 Total Credits: 16
Total 2021-2022 Credits: 37

Fall 2022 Term: September 01 - December 31

2050	Criminal Procedure: Investigations Crespo, Andrew	H	4
2079	Evidence Schulman, Emily	H	4
2142	Labor Law Sachs, Benjamin	H	4
2761	Misdemeanor Justice Natapoff, Alexandra	CR	1

Fall 2022 Total Credits: 13

Winter 2023 Term: January 01 - January 31

8099	Independent Clinical - MacArthur Justice Center Minow, Martha	CR	2

Winter 2023 Total Credits: 2

Spring 2023 Term: February 01 - May 31

2651	Civil Rights Litigation Michelman, Scott	H	3
8020	Harvard Immigration and Refugee Clinic Ardalan, Sabrineh * Dean's Scholar Prize	H*	5
2115	Immigration and Refugee Advocacy Ardalan, Sabrineh * Dean's Scholar Prize	H*	2
7000W	Independent Writing Weiss, Samuel	H	2

Spring 2023 Total Credits: 12
Total 2022-2023 Credits: 27

Fall 2023 Term: August 30 - December 15

2035	Constitutional Law: First Amendment Fried, Charles	~	4
2597	Crimmigration: The Intersection of Criminal Law and Immigration Law Torrey, Philip	~	2
2086	Federal Courts and the Federal System Goldsmith, Jack	~	5
3258	Jewish Law and Critical Theory Bar-Asher Siegal, Michal	~	2
3090	Legal Policies, Randomized Control Trials, and Ethics Greiner, D. James	~	1

Fall 2023 Total Credits: 14

continued on next page

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Harvard Law School

Record of: Simone A Wallk

Date of Issue: June 7, 2023
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Winter 2024 Term: January 02 - January 19

2169	Legal Profession DeStefano, Michele	~	3
		Winter 2024 Total Credits:	3

Spring 2024 Term: January 22 - May 10

2000	Administrative Law Vermeule, Adrian	~	4
8043	Crimmigration Clinic Torrey, Philip	~	3
		Spring 2024 Total Credits:	7
		Total 2023-2024 Credits:	24
		Total JD Program Credits:	88

End of official record

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HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

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In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

~~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)

Magna cum laude	Next 10% of the total class following *summa* recipients
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

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June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my great privilege to recommend my former intern, Simone Wallk, for a clerkship with Your Honor. I serve as intern coordinator for the Human Trafficking Prosecution Unit (HTPU) at the U.S. Department of Justice, Civil Rights Division. HTPU was formed within the Criminal Section of the Civil Rights Division in 2007 to consolidate the human trafficking prosecution expertise the Criminal Section had developed over decades of enforcing the pre-Trafficking Victims Protection Act (TVPA) involuntary servitude and slavery statutes. HTPU partners with United States Attorney's Offices nationwide to prosecute human trafficking cases involving forced labor, transnational sex trafficking, and sex trafficking of adults by force, fraud, or coercion, specializing in novel, complex, multijurisdictional, and international cases.

I had the absolute pleasure of supervising Ms. Wallk during her 2022 summer internship with HTPU. In my 10 years supervising over 150 interns, Ms. Wallk stands out as one of the top 10 interns that I have worked with, and I give her my very highest recommendation. Her extraordinary productivity, combined with her outstanding quality of work made her an all-star. Having had the great honor of serving as a federal law clerk myself, I know without a doubt that Ms. Wallk would make an exceptional law clerk and contribute significantly to your chambers.

Exemplifying her productivity, over the course of her 10-week internship, Ms. Wallk completed approximately 10 substantive research and writing projects on varying topics impacting our TVPA enforcement. I want to highlight two in particular. In the first example, Ms. Wallk researched and drafted the response to a defendant's motion for early termination of supervised release in a forced labor case. The defendant's motion was ultimately denied based on her well-researched, well-written, and persuasive response. This project demonstrated her persuasive writing skills and ability to dive into a dynamic and challenging area of law. Responding to the defendant's motions required her to understand and analyze the arguments for and against early termination of supervised release based on different versions of the Federal Sentencing Guidelines. She met these challenges head-on and produced an exemplary work product that resulted in a successful ruling for the government.

The second example of Ms. Wallk's exceptional work was the resource document she produced using previous research and analysis on multiplicity and duplicity issues with our sex trafficking statute. These were complex and multi-faceted concepts that even the most seasoned prosecutors have trouble wrapping their heads around. Ms. Wallk tackled this assignment with determination. The final work product showcased her exceptional analytical ability and her ability to transform complex topics into digestible and easy to understand concepts. The comprehensive memorandum and the accompanying one-pager she drafted now serve as an important reference document for prosecutors when determining how to charge sex trafficking without creating multiplicity and duplicity issues that could undermine the legality of our prosecutions.

In addition to these two projects, the other research projects she completed involved issues of racketeering, charging buyers in sex trafficking cases, marriage fraud, pre-trial detention, drug-based coercion, "other losses" in the restitution context, and protective orders. She also assisted an attorney with going through discovery documents, and she attended and participated in victim interviews for one of our trafficking investigations.

Throughout these and other projects, Ms. Wallk demonstrated exceptional intelligence and outstanding analytical and writing skills. Ms. Wallk also impressed me with how hard-working and productive she was throughout the internship. She had several projects she was juggling at once, and she did a remarkable job managing the different projects, always operating at the highest efficiency and producing top quality work. Ms. Wallk always conducted herself with the utmost professionalism and proved to be extremely dependable and reliable. She worked well independently, but also instinctively knew when to check in or make follow-up inquiries to ensure she was on the right track. All these qualities became apparent very quickly into her internship and she became my "go-to" intern throughout the summer, even though she had only completed one-year of law school while the other interns were all rising 3Ls. When Ms. Wallk was wrapping up her internship, I wrote the following in her evaluation, which exemplifies just how impressive Ms. Wallk was:

"Even with being the only rising 2L out of our four interns, Ms. Wallk's work exceeded expectations. Her analytical abilities and strong research and writing skills stood out among her peers. Her professionalism, collegiality, and easygoing manner made her an excellent employee and colleague. Ms. Wallk began producing strong work product, from the very start, which was again especially notable for only having finished one year of law school. Her productivity this summer was unmatched . . . With every assignment, I was impressed with Ms. Wallk's strong analytical skills—it is evident in her research and analysis that she has a keen intellect, an ability to understand complex areas of law with little difficulty, and excellent writing skills."

Bottom line, Ms. Wallk was an absolute pleasure to work with, and she always maintained a calm, positive, and friendly demeanor even under stressful circumstances. There have only been a few law students who impressed me the way she did in all my years of supervising law interns. All the qualities she possesses will ensure a successful tenure in your chambers. Grab her while you can!

Thank you for your consideration. If you have any questions, please do not hesitate to contact me. I would love the opportunity to

Brandy Wagstaff - brandy.wagstaff@gmail.com - 301-785-7562

discuss Ms. Wallk's qualifications further.

Sincerely,

Brandy Wagstaff
Legal Counsel for Litigation
Human Trafficking Prosecution Unit
(202) 598-5238
Brandy.Wagstaff@usdoj.gov

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a Clinical Professor of Law at Harvard Law School and Director of the Harvard Immigration and Refugee Clinical Program. I became acquainted with Simone when she was a student in my Immigration and Refugee Advocacy seminar and clinic this past spring. Simone is smart, diligent, thoughtful, compassionate, and an excellent writer. I recommend her to you wholeheartedly.

Simone excelled as a clinical student, receiving the Dean's Scholar award in both the clinical seminar and for her clinical work. She is without a doubt one of the most proactive, quickest-to-learn, compassionate, and dedicated students I have had the opportunity to teach and supervise during 15 years at HLS. It is exceedingly rare for the same student to be awarded the DS in both the clinic and the class, since only 2 can be awarded for each. But Simone's performance was so exceptional that there was unanimous agreement that she should be awarded it for both. In the clinical seminar, Simone contributed thoughtfully and astutely to class discussions and was diligent and proactive in her clinical work. She works well independently as well as in a team and asks thoughtful questions to improve her understanding and incorporate and respond to feedback.

Simone hit the ground running with her clinical work, signing up for 5 credits (meaning 20 hours per week) to maximize the range of cases and work that she could take on. Her docket was wide-ranging and busy with multiple briefing deadlines, clients in crisis, and community partners to navigate. Juggling all of the various clinical projects (along with her extracurricular commitments and courses) required a high degree of organization and clear communication which she managed effectively without ever dropping a ball. When her teammates were unable to move a group project forward, Simone took the lead in coming up with a plan and eliciting the guidance and feedback needed to ensure that the group was on track.

The first project Simone tackled was an amicus brief directed at the Ninth Circuit, drafted on behalf of international refugee law scholars for Al Otro Lado v. Mayorkas, arguing that the Plaintiffs' claims around metering and border turn-backs were cognizable under the Alien Tort Statute. Simone consistently set herself aside from her peers with her deep intellectual curiosity, adept legal research skills, and proactivity. She took particular care to make sure that she surveyed all of the relevant case law and literature to write the strongest amicus brief possible. Although she did not have a great deal of familiarity with international law and the norm on non-refoulement before joining the clinic, she did the work necessary to write an authoritative amicus signed on to by internationally-recognized refugee law scholars. She responded incredibly well to feedback editing and re-editing drafts, addressing comments and helping her team-mate do the same with incredible patience and grace. She presented about the role of amicus advocacy in the clinic seminar and did so clearly and in an engaging manner, quickly bringing the class up to speed about the importance of the brief and the real world implications of the international laws that were being violated.

The second major project Simone worked on was a Board of Immigration Appeals brief that tackled complex questions related to the duty to develop the record in pro se asylum cases and protection under the Torture Convention for immigrants with disabilities. With the brief, as with all her other work, Simone proved herself to be extraordinarily proactive. She set a schedule for herself and her teammates to outline and draft the brief to provide ample time for feedback and edits. She submitted a draft outline and final brief that was of the highest quality. When asked to coordinate with team members, Simone handled with tremendous grace the difficult task of making sure that the final work product was the best possible. Simone's work with the clinic has been outstanding on many levels—her legal skills, her ability to work well both independently and in a group, and her fantastic research and writing skills are all exceptional. Her first draft of a brief was one of the strongest I have ever read.

She was also willing to jump in to help on any task as needed, as evidenced by the last minute need from a teammate for support with researching and writing another section of the brief, which she undertook quickly and efficiently. In all of her work, Simone made sure what she produced was of the highest quality. She also was always attentive to client needs even when working on systemic litigation, engaging in fact-gathering for a habeas petition and medical advocacy to ensure that the client's needs were met.

Finally, as a member of a team developing a complaint to remedy severe access to counsel issues at a local detention facility, Simone helped gather facts on language access and communications issues, drafted a federal civil rights complaint, built relationships with individual and attorney plaintiffs, and conducted intakes with a community partner with people at the jail. This project directly intersected with her interest in prisoners' rights litigation and built on her experience with the Prisoner Legal Assistance Project, a student practice organization in which she served as Director of Legal Resources. Her work with PLAP, covering weekly shifts providing legal research assistance to incarcerated people and representing clients before the Parole Board and in impact litigation, has given her a deep understanding of Eighth Amendment law and administrative law, both of which were directly relevant to her clinical work this semester.

In addition to being incredibly smart and diligent, Simone is also extraordinarily humble and kind; she works hard, going above and beyond the call of duty without asking for accolades or recognition. She is very conscientious and detail-oriented in all of her work and thoughtful and thorough in her legal research and writing. She does not hesitate to put in the time and effort necessary to bring a project to completion and to ensure that it is of the highest quality. I have no doubt that she would be an excellent addition to any chamber. I cannot recommend her more highly.

Sabrineh Ardalan - sardalan@law.harvard.edu - 617-384-7504

I hope this letter is helpful to you. Please feel free to contact me with any questions. I can be reached at sardalan@law.harvard.edu or 617-384-7504.

Sincerely,

Sabi Ardalan
Director, Harvard Immigration and Refugee Clinical Program
Clinical Professor of Law, Harvard Law School

June 07, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am delighted to write on behalf of Simone Wallk, a rising 3L at Harvard Law School who has applied for a clerkship in your chambers. Simone's superb work for me, first as a student in my Legislation and Regulation course and then as my research assistant, leads me to recommend her with utmost enthusiasm.

I first met Simone as a student in my Legislation and Regulation class in the Spring of 2022. The course provides an introduction to lawmaking in the administrative state. It explores the practice and theory of legal interpretation by courts and by agencies, as well as the structural and procedural dimensions of administrative governance under the U.S. Constitution and the Administrative Procedure Act.

Simone thrived in the course. She immersed herself in the readings and she was a regular and insightful contributor to our discussions. Her questions reflected thoughtful engagement with the assigned materials. And her answers to "cold calls" were nuanced and incisive.

Given her terrific performance throughout the semester, it did not surprise me that Simone wrote a strong examination for the course. She identified and accurately assessed a range of difficult issues at the intersection of constitutional and administrative law. She advanced a nuanced and sophisticated statutory interpretation argument. And she wrote a careful, thorough, and well organized set of essays.

Simone's strong work in Legislation and Regulation led me to invite her to be my research assistant, something I was only able to do with a few students out of an extremely strong group of applicants. Simone's research for me has been nothing short of phenomenal. Simone's work has been indispensable to a book project that I am currently authoring my colleague Niko Bowie on the history of judicial supremacy and countervailing traditions of political constitutionalism in the United States. In our book, Professor Bowie and I trace the roots of political constitutionalism in the United States to the political abolitionism of the mid-nineteenth century. In connection with this argument, we asked Simone to synthesize for us the abolitionist publications of eighteen nineteenth-century authors, with special attention to how these authors understood American constitutionalism and the means through which unconstitutional laws could be challenged. Simone's assessment of each of these authors was incisive, concise, and insightful. Her research highlighted the diverse perspectives and advocacy approaches employed by these authors in response to what they understood to be unconstitutional legislation, including petitioning, expanding the franchise, and jury nullification.

We separately asked Simone to research discussions of judicial review in newspapers between 1795 and 1820, and more recently between 1820 and 1840. Here again, Simone's findings have been simply stellar. Through this research Simone discovered a fascinating and extensive discussion about judicial review in Congress during the debates on the Judiciary Act of 1802. The debate was so intriguing that we asked Simone to pivot for a time to the congressional record so that we could immerse ourselves in these discussions. Her findings were striking and have become the focus of a prologue for our book project – a prologue that we did not plan to write until Simone discovered this set of debates.

Throughout these projects, Simone organized a tremendous amount of information in accessible ways, and she was able to prioritize, synthesize, and elucidate key findings. Though she devoted ten hours to this research during most weeks, she was able to effortlessly juggle multiple law school responsibilities. Her work was always timely, and her research strategies were creative and adaptive. She consistently invited and responded to thoughts and feedback on her work.

Simply put, Simone has been a total joy to work with. She is intellectually curious, warm, and kind. She is a tenacious researcher and an insightful interlocutor.

I am confident that Simone would be a wonderful addition to any chambers. If I can provide you with any additional information, please do not hesitate to let me know.

Sincerely yours,

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Writing Sample

Drafted Spring 2023

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The attached is an excerpt from a fifty-page brief filed with the Board of Immigration Appeals. The respondent was placed in removal proceedings and was denied asylum, withholding of removal, and relief under the Convention Against Torture. The following excerpt was one of three arguments presented to the Board of Immigration Appeals in the respondent's request for reversal and remand. The opening section of the brief argued that the immigration judge erred in finding the respondent competent to represent himself given his cognitive and mental health disabilities. This excerpt refers to the immigration judge as an "IJ" and redacts the respondent's name and country of origin.

II. THE IJ VIOLATED [redacted]'S DUE PROCESS AND STATUTORY RIGHTS TO A FULL AND FAIR HEARING BY FAILING TO DEVELOP THE RECORD AND BY IMPOSING UNDUE CORROBORATION REQUIREMENTS.

The Fifth Amendment entitles non-citizens to due process of law in immigration proceedings, including a full and fair hearing and the opportunity to present evidence. *Mekhoukh v. Ashcroft*, 358 F.3d 118, 128 (1st Cir. 2004) (finding the right to due process in deportation proceedings "well established" (citation omitted)); *Quintero v. Garland*, 998 F.3d 612, 623–24 (4th Cir. 2021) (recognizing the IJ's duty to develop the record based on the Due Process Clause and 8 U.S.C. § 1229a(b)(1)); *see also* 8 U.S.C. § 1229a(b)(1) (requiring IJs to receive evidence and interrogate, examine, and cross-examine witnesses); 8 U.S.C. § 1229a(b)(4)(B) (granting respondents the right to a "reasonable opportunity" to "present evidence"); 8 C.F.R. § 1240.10(a)(4) (same).

A due process claim requires a showing that a defect in the proceedings prejudiced the outcome of the case. *Pulisir v. Mukasey*, 524 F.3d 302, 311 (1st Cir. 2008) (noting that "prejudice is an essential element of a viable due process claim"). However, a respondent does not always need to demonstrate that a violation of due process prejudiced the outcome of the proceedings, including when the respondent was "improperly denied counsel in immigration proceedings." *Hernandez Lara v. Barr*, 962 F.3d 45, 56 (1st Cir. 2020) (noting that, while the First Circuit has not decided the issue, "[t]he majority approach does not require a showing of prejudice, reasoning that a denial of counsel so fundamentally affects a proceeding that prejudice may be assumed"). Although [redacted] contends that he need not demonstrate prejudice as he was improperly denied counsel, he was prejudiced by the IJ's failure to adequately develop the record and explain how he could prove the elements of his claim. The IJ's imposition of excessive and inappropriate

corroboration requirements also prejudiced [redacted], as the IJ directly relied on evidentiary gaps in making his ruling. Accordingly, the Board should reverse and remand.

A. The IJ violated [redacted]'s due process and statutory rights by failing to develop the record and elicit all relevant facts, as required when the respondent is pro se, detained, and has serious mental health conditions.

IJs must develop the record and elicit all relevant facts to ensure the respondent presents his case "as fully as possible and with all available evidence." *Mekhoukh*, 358 F.3d at 129–30, n.14 (citation omitted). IJs have a statutory duty to receive evidence, examine the respondent and any witnesses, develop the record, and explore all relevant facts. *See* 8 U.S.C. § 1229a(b)(1). Courts have emphasized that "unlike an Article III judge, [an IJ] is not merely the fact finder and adjudicator but also has an obligation to establish the record." *Mekhoukh*, 358 F.3d at 129–30, n.14 (citation omitted); *see Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006) (remanding to another IJ where IJ failed to develop the record); *Toure v. Att'y Gen. of U.S.*, 443 F.3d 310, 325 (3d Cir. 2006) (emphasizing the IJ's "duty to develop an applicant's testimony, especially regarding [a dispositive] issue" and remanding given "doubts about the reasonableness of the IJ's demand for corroboration").

Where a respondent appears pro se, the IJ's duty to develop the record takes on heightened importance. *Quintero*, 998 F.3d at 622, 627 (recognizing the duty to develop the record as "especially crucial in cases involving unrepresented noncitizens"); *cf. James v. Garland*, 16 F.4th 320, 324–25 (1st Cir. 2021) (noting that submissions from a pro se applicant should be read "liberally in her favor"). As the Fourth Circuit summarized, "[o]ther circuits, the Attorney General, and the Board of Immigration Appeals alike have emphasized the importance of this duty in the pro se context" based on the complexity of immigration law, the limited English proficiency and legal knowledge of many pro se respondents, and the "gravity of the interests at stake." *Quintero*,

998 F.3d at 627; *see also Matter of J-F-F-*, 23 I&N Dec. 912, 922 (A.G. 2006) (noting that development of the record is especially appropriate for pro se respondents). Adjudicating the case of a pro se respondent who is detained further heightens the IJ's duty to develop the record. *See Matter of S-M-J-*, 21 I&N Dec. 722, 725, 740 (BIA 1997) (noting that adjudicators cannot impose "[u]nreasonable demands . . . on an asylum applicant to present evidence to corroborate particular experiences" and should afford applicants the "benefit of the doubt"); *id.* at 737–38 (Rosenberg, concurring) (describing the challenges of gathering corroborating evidence and establishing eligibility for immigration relief while detained).

Here, the IJ violated [redacted]'s due process and statutory rights by failing to adequately develop the record. The IJ's inadequate record development prejudiced [redacted], who could not fully present his case or make arguments on his own behalf. The IJ explicitly relied on gaps in the record—including a lack of information regarding the torture [redacted] feared and a lack of clarity on past harms to his family—in denying relief. The Board should reverse and remand the IJ's decision to further develop the record.

1. [redacted] could not reasonably present his case because the IJ failed to adequately develop the record and elicit all relevant facts.

The IJ neglected his affirmative duty to develop the record and elicit all relevant facts, especially those related to the torture [redacted] feared in the [redacted]. The IJ's duty to develop the record "depends on the particulars of each case—the respondent's characteristics, such as age, education level, detention status, and immigration history; the applicable ground(s) of removability; and the form(s) of relief sought." *Quintero*, 998 F.3d at 630

(citation omitted).[1] Given that [redacted] is detained, illiterate, pro se, and suffers from cognitive and mental health disabilities, the IJ's duty to develop the record in this case was elevated. *Id.* The IJ failed in his duty to "probe into, inquire of, and elicit all [relevant] facts," especially considering [redacted]'s personal circumstances. *Id.* at 629 (citations omitted).

To begin, the IJ failed to "explain[] the hearing procedures and the relevant legal requirements in plain language" to [redacted]. *See Quintero*, 998 F.3d at 629. Indeed, the IJ completely neglected his duty to "adequately explain . . . how the applicant may prove his or her eligibility for relief." *Id.* at 633. [redacted]'s repeated explanation of his cognitive disabilities and illiteracy, Tr. at 74, 85, Jan. 23, 2023, should have placed the IJ on notice of the importance of explaining the hearing procedures and legal requirements for relief.[2] Yet, at no point during the merits hearing did the IJ explain to [redacted] that his claim under the Convention Against Torture (CAT) required him to show that he would be tortured in the [redacted] by a public official or that a public official would be "willfully blind" to his torture, nor did the IJ attempt to develop the record with respect to the torture [redacted]

[1] It should be noted that [redacted] submitted *Quintero* to the IJ. Exh. 3 at 93. Had the IJ examined [redacted]'s submission adequately, he would have recognized the importance of developing the record given the "particulars" of this case. *Quintero*, 998 F.3d at 630.

[2] The IJ also failed to develop the record by seeking to obtain the transcript of the prior Institutional Hearing Program (IHP) hearing at which [redacted] had been found incompetent to represent himself. Tr. at 1–18, Nov. 18, 2020, Add. 65–82 . On December 8, 2022, after [redacted]'s judicial competency inquiry, DHS counsel informed the IJ that "[t]he Department separately has information that the respondent has a particular mental health diagnosis." Tr. at 29, Dec. 8, 2022. The IJ should have taken steps to inquire further into [redacted]'s mental health diagnoses, including by obtaining prior hearing transcripts, to properly evaluate what his duty to develop the record for this respondent entailed. Courts have recognized that respondents may challenge the absence of a transcript or an inaccurate transcript as a violation of due process. *See, e.g.*, *Samet v. Att'y Gen. of United States*, 840 F. App'x 701, 704 (3d Cir. 2020) ("[A] decisive question in deciding whether Samet's [incomplete] transcript violates the Fifth Amendment is if it impacted the outcome of his case."). Here, the IJ's failure to probe the record as to the prior competency proceedings prejudiced [redacted]'s case as the IJ failed to consider the "particular circumstances" requiring special care in explaining hearing procedures and legal requirements. *See Quintero*, 998 F.3d at 629.

feared.[3] *See H.H. v. Garland*, 52 F.4th 8, 17–18 (1st Cir. 2022). While [redacted] testified to past torture, the IJ "failed to explain" the relevance of those facts. *Zamorano v. Garland*, 2 F.4th 1213, 1226–27 (9th Cir. 2021). In *Quintero*, the court found that "a detained, pro se applicant with only a high school education, limited English skills, and no legal training" could not be expected to explicitly identify a particular social group when the IJ failed to explain this concept or develop the record. *Quintero*, 998 F.3d at 630, 640. Similarly, [redacted], who was detained, pro se, diagnosed with cognitive disabilities, and illiterate, could not be expected to understand or satisfy the CAT requirements without explanation or assistance from the IJ.

The IJ also failed to probe into the details of [redacted]'s experience of childhood rape and abuse, which were central to his CAT claim. When [redacted] disclosed his childhood rape during his testimony, Tr. at 52, Jan. 23, 2023, the IJ merely asked why this information was not in [redacted]'s I-589 application, which he had dictated to another detained immigrant because he cannot read or write. *Id.* at 74–75. The IJ failed to inquire who raped [redacted] and how this rape might relate to his CAT claim. The IJ also failed to develop the record regarding [redacted]'s testimony about the torture he experienced as a child. [redacted] repeatedly testified that "they tortured me and sent messages to my father." *Id.* at 51–52. The IJ did not inquire into how and by whom [redacted] was tortured and whether this torture was distinct from the rape he experienced.

Furthermore, the IJ failed to investigate whether [redacted] would face torture to

[3] In three sentences at a hearing on November 3, 2023—a full two months before [redacted]'s merits hearing—the IJ briefly explained the requirements for asylum, withholding of removal, and relief under the CAT. Tr. at 10, Nov. 3, 2022 ("To receive asylum in the United States, you must prove that you suffered persecution or will suffer persecution in the future based on race, religion, nationality, political opinion, or membership in a particular social group. If someone other than your home country's government is persecuting you, you will need to show that the government is unable or unwilling to prevent the persecution . . . In order to receive protection under the Convention Against Torture, you must show that it is likely that you would be tortured by your government or someone the government is unable or unwilling to control.").

which government officials would be "willfully blind" as required for relief under the CAT. *See H.H.*, 52 F.4th at 17–20. While [redacted] mentioned that the people he feared "have an extreme level of power" and "bought off the authorities," Tr. at 50–52, Jan. 23, 2023, the IJ failed to develop the record as to his persecutors' relationship with the government and their source of power. Indeed, the IJ asked no questions to develop [redacted]'s statement that the police "didn't do anything" when crimes against his family were reported, a potentially critical element in showing the government's willful blindness to torture. *Id*. at 52; *see H.H.*, 52 F.4th at 17–18. The IJ thus violated [redacted]'s due process and statutory rights by failing to develop the record and elicit all relevant facts.

2. The IJ's failure to develop the record prejudiced [redacted].

Because the IJ's failure to develop the record "so fundamentally affect[ed]" the outcome of [redacted]'s proceedings, "prejudice may be assumed." *Hernandez Lara*, 962 F.3d at 56. However, even if a showing of prejudice is required, [redacted] was clearly prejudiced by the IJ's inability to adequately develop the record. In denying [redacted]'s CAT claim, the IJ relied on evidentiary gaps that were a result of his own failure to develop the record, and in so doing, prejudiced the outcome.

Specifically, the IJ held that [redacted]'s testimony about being raped "is an embellishment" that would be given "no weight." I.J. at 14.[4] Yet, as discussed *supra*, the IJ failed to ask the necessary follow-up questions to develop the record on this rape and its importance for [redacted]'s claim for relief. The IJ failed to properly consider [redacted]'s explanation that he did not include the rape on his I-589 because he cannot read or write and the

[4] The Board should presume the respondent is credible when the IJ has not made an explicit adverse credibility determination. *See Garland v. Ming Dai*, 141 S.Ct. 1669, 1677–78 (2021) (interpreting 8 U.S.C. §§ 1158(b)(1)(B)(iii), 1231(b)(3)(C), 1229a(c)(4)(C)).

application was dictated to another detained immigrant. Tr. at 75, Jan. 23, 2023. [redacted] attempted to explain, "I didn't feel comfortable telling that to another person . . . [in] an institution where it's only men," but the IJ cut off [redacted] mid-sentence. *Id.* While the IJ acknowledged that [redacted]'s explanation might be true, he nevertheless found the lack of corroborating evidence for the rape detracted from "the credibility of the assertion." I.J. at 10. Furthermore, the IJ found that [redacted]'s testimony on harm to his family members "was vague, and not very precise, [as to] who exactly committed the harm to the respondent's family," yet the IJ did not try to elicit further information regarding the perpetrators of this harm. *Id.* at 15. Finally, the IJ held that [redacted] failed to establish government "acquiescence" to his torture, *id.* at 16, but the IJ failed to further develop the record as to the power of the perpetrators and [redacted]'s statement that the police "didn't do anything" when his family filed police reports. Tr. at 52, Jan. 23, 2023.

The IJ's failure to explain the legal requirements of [redacted]'s claims—as required by the duty to develop the record—prevented [redacted] from presenting arguments as to why he qualified for relief. During [redacted]'s statement at the end of the hearing, the IJ admonished him for re-testifying to the facts of his testimony and cut off [redacted] as he gave his statement. *Id.* at 88–90. Yet, given [redacted]'s cognitive disabilities and limited education, compounded by the IJ's failure to explain the legal requirements for his claims, [redacted] could only restate his prior testimony. *See Quintero*, 998 F.3d at 630. As the Fourth Circuit acknowledged in *Quintero*, "we simply do not see what more we could ask of" a respondent in [redacted]'s circumstances. *Id.* at 640.

B. The IJ failed to consider that [redacted] was pro se, detained, and suffered from serious mental health conditions in imposing corroboration requirements.

The IJ erred in demanding unreasonable corroboration from [redacted] without recognizing or accommodating the challenge of obtaining evidence as an illiterate, pro se respondent in detention with serious mental health issues. The IJ failed to allow [redacted] an opportunity to explain the absence of evidence relating to his CAT claim and then relied on the absence of corroboration in denying relief. The IJ's requirement of unreasonable corroboration violated well-settled precedent and warrants reversal.

1. The IJ erred as a matter of law in requiring unreasonable corroboration from [redacted].

An application for relief under the CAT may be granted on an applicant's testimony alone. *See* 8 C.F.R. § 1208.16(b), (c)(2) (withholding of removal and CAT) ("The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration."); *Soeung v. Holder*, 677 F.3d 484, 487 (1st Cir. 2012). When assessing whether corroboration should be provided, adjudicators can only require reasonably available corroboration. INA § 208(b)(1)(B)(ii).[5] Yet the IJ failed to follow this well-established mandate.

An IJ must make explicit findings to determine (1) "whether it is reasonable to expect that the applicant's personal experiences are easily subject to verification" and (2) "[whether] the explanation given by an asylum applicant for failing to provide such documentation is a reasonable one." *S-M-J-*, 21 I&N Dec. at 722, 725–26 (considering whether such information would "normally be created or available in the particular country and is accessible to the [respondent]");

[5] The REAL ID Act codified the standard in *S-M-J-* providing that credible testimony alone may be sufficient to grant immigration relief and adjudicators may only require "reasonably available" corroboration. *See Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015) (quoting H.R. Rep. No. 109-72, at 165 (2005) (Conf. Rep.)).

Soeung, 677 F.3d at 488 (applying this test to claims for asylum, withholding of removal, and CAT relief). Here, the IJ erred in executing both steps.

a. The IJ failed to assess the reasonableness of requiring corroboration.

In evaluating the reasonableness of requiring corroborating evidence, the IJ must consider the "practical disabilities" of pro se and detained immigrants. *S-M-J-*, 21 I&N Dec. at 738 (Rosenberg, concurring) (describing challenges detained immigrants face in communicating with family abroad and obtaining evidence in a timely fashion, as well as risks to family members gathering evidence abroad); *see also Quintero*, 998 F.3d at 629 ("'Sensitivity to what evidence the [noncitizen] can reasonably be expected to produce is especially critical' for detained respondents" with limited access to documents (citation omitted)). Adjudicators must attend to "the particular circumstances of [each] case, including what types of evidence the [noncitizen] can and cannot reasonably be expected to produce[.]" *Quintero*, 998 F.3d at 629.

In requiring extensive corroboration of harms to [redacted]'s family in the [redacted], the IJ failed to consider [redacted]'s circumstances, including his serious mental health diagnoses, lack of education, illiteracy, pro se status, and the fact that he was detained. The IJ wrongly held that corroborating evidence of the harm [redacted] and his family suffered in the [redacted] was reasonably available. *See* I.J. at 10. [redacted] explicitly testified in response to DHS's questioning that he was not able to obtain police reports or death certificates corroborating attacks on his father's family because they no longer resided in the [redacted]. Tr. at 69–70, 87, Jan. 23, 2023. While [redacted]'s mother lives in the [redacted] she has been separated from his father for several decades, does not share a last name with his father, and thus could not request death certificates or police reports about his father's side of the family. *Id.* at 69–70, 86. As members of his father's

family all reside in the United States, they could not go to court in the [redacted] to obtain these records. *Id.* at 87. The IJ thus erred in holding that [redacted]'s "explanation that his mother doesn't have the last name so she could not get the police reports is not plausible." I.J. at 10. Given the challenges of placing international calls from detention and receiving international mail in a timely fashion, the IJ likewise erred in holding that "corroborating evidence from his family members and/or his mother who lives in the [redacted] . . . in the form of a letter and or affidavits are reasonably available." *Id.* at 10.

b. The IJ failed to consider whether [redacted]'s childhood rape was "easily subject to verification."

The IJ violated both prongs of the *S-M-J-* test with regards to the rape [redacted] experienced as a child. Given the young age at which [redacted] was raped and the fact that this rape occurred abroad, Tr. at 52, Jan. 23, 2023, it is not reasonable to expect this experience to be "easily subject to verification." *S-M-J-*, 21 I&N Dec. at 742. *See generally Ordonez-Quino v. Holder*, 760 F.3d 80, 90 (1st Cir. 2014) (acknowledging limitations on respondent's ability to prove claims for relief based on victimization as a child). It was unreasonable for the IJ to expect corroboration of childhood sexual abuse that occurred internationally, particularly given the stigma around sexual abuse in general and against men and boys specifically.

Second, the IJ failed to consider the reasons given by [redacted] to explain the absence of corroborating evidence as to his childhood rape. *S-M-J-*, 21 I&N Dec. at 742. The IJ interrupted [redacted] as he explained, "I didn't feel comfortable telling that to another person . . . [in] an institution where it's only men." Tr. at 75, Jan. 23, 2023. [redacted] later explained, "I filled out this application with [another] person. I don't know how to read or write," plausibly explaining that inconsistencies between his testimony and I-589 occurred because he did

not fill out his own I-589. *Id.* at 85. The IJ went on to hold that this explanation "may be possible," but the fact that evidence of the rape "is not provided in any other corroborating evidence detracts from the respondent's credibility and the credibility of the assertion." I.J. at 9–10. [redacted]'s experience was not easily subject to verification and, even if it were, he provided a reasonable explanation as to the absence of corroboration.

c. The IJ failed to afford [redacted] the opportunity to explain the lack of corroboration and to develop the record.

An IJ "must ensure that the applicant's explanation [of the unavailability of evidence] is included in the record." *S-M-J-*, 21 I&N Dec. at 724; *L-A-C-*, 26 I&N Dec. at 519, 521 (requiring the IJ to "afford the applicant an opportunity to explain" the unavailability of evidence "and ensure that the explanation is included in the record"); *see Soeung*, 677 F.3d at 488 (requiring that the IJ make explicit findings that an applicant's explanation for the unavailability of evidence was unreasonable); *see also Guzman-Vazquez v. Barr*, 959 F.3d 253, 261 (6th Cir. 2020) (holding that "an IJ may not require corroborative evidence without giving the applicant an opportunity to explain its absence" and describing similar holdings in the First, Second, Fifth, Seventh, and Eighth Circuits).

First, the IJ entirely failed to ensure [redacted] had the opportunity to explain the absence of evidence supporting his claim that the government of the [redacted] was and would continue to be willfully blind to torture. At no point in the hearing did the IJ or DHS counsel inquire about corroborating evidence for [redacted]'s claims that the perpetrators of crimes against his family "bought off the authorities . . . The government of the [redacted] is corrupt and is for sale, it can be bought." Tr. at 51–52, 54, Jan. 23, 2023. Yet the IJ relied on the

"insufficient evidence to support this assertion" in finding [redacted] ineligible for relief. I.J. at 15.

The IJ's duty to develop the record also requires the IJ to help the respondent consider what sources of evidence are readily available. *See Agyeman v. I.N.S.*, 296 F.3d 871, 882–83 (9th Cir. 2002) (holding that the IJ erred in failing to suggest sources of evidence that may have helped the applicant prove his claim). Given the "limited access to documents and restricted ability to place telephone calls in detention," detained respondents "depend even more heavily on the IJ for assistance in identifying appropriate sources of evidence." *Id.* at 884. Furthermore, the Board has emphasized that "[u]nreasonable demands are not placed on an asylum applicant to present evidence to corroborate particular experiences (e.g., corroboration from the persecutor)." *S-M-J-*, 21 I&N Dec. at 725. The IJ entirely failed to engage [redacted] in considering how he might verify the power of his persecutors, the harms to his family, or his childhood rape. While the IJ and DHS counsel asked why [redacted]'s rape and the harms to his family were not corroborated, Tr. at 70, 74–75, Jan. 23, 2023, the IJ did not assist [redacted] in considering how he might verify these experiences.

2. The IJ's undue corroboration requirements prejudiced [redacted].

Because the IJ's undue corroboration requirements "so fundamentally affect[ed]" the outcome of [redacted]'s proceedings, "prejudice may be assumed." *Hernandez Lara*, 962 F.3d at 56. Even if a showing of prejudice is required, [redacted] was clearly prejudiced. In denying [redacted]'s claims for relief, the IJ erroneously relied on the lack of evidence available to [redacted], which prejudiced the case outcome.

First, the IJ directly relied on the lack of corroborating evidence in denying [redacted]'s claims for relief under the CAT, even though the IJ failed to give [redacted] an

opportunity to explain the absence of evidence. The IJ specifically noted that [redacted] "did not provide corroborating evidence to support his claims that family members were harmed in the way that they were harmed." I.J. at 14. The IJ concluded that [redacted] "has not provided evidence to support [the] assertion" that his persecutors "are very powerful, and had money, and would bribe government officials." *Id.* at 15. Yet the IJ never provided [redacted] an opportunity to explain the absence of evidence about his persecutors' power. *S-M-J-*, 21 I&N Dec. at 724; *Soeung*, 677 F.3d at 488; *Guzman-Vazquez*, 959 F.3d at 264 (holding that IJ erred in relying on applicant's failure to corroborate when applicant was given no opportunity to explain absence of corroboration). After noting that [redacted] "failed to provide sufficient evidence" to establish government awareness of or acquiescence to torture inflicted on him, the IJ denied his CAT claim. I.J. at 16. The IJ's failure to follow the two-step *S-M-J-* inquiry deprived [redacted] of an opportunity to explain evidentiary gaps, which prejudiced [redacted] as the IJ directly relied on those gaps in his ruling.

Second, the IJ unreasonably held that the lack of corroborating evidence provided for the rape [redacted] experienced as a child "detracts from the respondent's credibility." *Id*. at 15. It was a legal error for the IJ to use that lack of corroboration, which was not reasonably available, to call into question [redacted]'s credibility. *See* INA § 208(b)(1)(B)(ii) (providing that corroboration for credible testimony may only be required when reasonably available); *Dawoud v. Gonzales*, 424 F.3d 608, 612–13 (7th Cir. 2005) (holding that lack of corroboration that is not reasonably available cannot discredit an applicant's credible testimony).

Applicant Details

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Law Review/Journal	**Yes**
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June 10, 2023

The Honorable Juan R. Sánchez, Chief Judge
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
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Dear Judge Sánchez:

I am a rising third-year student at New York University School of Law, a Furman Academic Scholar, and a Senior Articles Editor on the NYU Review of Law and Social Change. I write to express my interest in a 2024-25 term clerkship in your chambers.

As a second-career law student with a Ph.D. in English, I would bring to your chambers the exceptional writing and research skills developed in a decade-long academic career, the leadership experience and adaptability that I gained as a teacher, and the intellectual curiosity that led me to pursue a career in law. During my time at NYU Law, my work as a research assistant for Professors Melissa Murray and Emma Kaufman has made my writing process more efficient and flexible while allowing me to dive deeply into individual case records and complex doctrinal questions. On a personal note, I moved to Philadelphia three years ago and immediately fell in love with the city; I hope to remain here for the long haul. I would consider it a special privilege to serve the federal courts in my adoptive hometown.

Enclosed please find my resume, unofficial law school transcript, and two writing samples. I have also included letters of recommendation from three NYU Law faculty members: Professor Murray (212-998-6440), Professor Kaufman (212-998-6250), and Professor Liam Murphy (212-998-6160). Please feel free to contact Professor Daryl Levinson (212-998-6613), also of NYU Law, for a further reference.

I would welcome the opportunity to speak with you about the position at your convenience. Thank you very much for your consideration; I look forward to hearing from you.

Respectfully,

Hannah Walser

Enclosures

HANNAH WALSER

718 South Percy Street, Philadelphia, PA 19147 | 252-312-6646 | hw3012@nyu.edu

Education

New York University School of Law
Candidate for JD, May 2024
Honors: Furman Academic Scholar
(three-year full tuition scholarship for students who show exceptional promise as future legal academics)
Florence Allen Scholar
(a student in the top 10% based on their cumulative averages after four semesters)
Activities: *NYU Review of Law and Social Change*
Senior Articles Editor, April 2023–present
Staff Editor, August 2022–March 2023
High School Law Institute
Instructor, 2022–23

Stanford University
PhD, English and American Literature, June 2016
Honors: Alden Dissertation Prize
Andrew Smith Memorial Essay Prize

University of Chicago
BA, English Language and Literature, June 2010
Honors: Napier Wilt Prize for Best BA Project in English
Phi Beta Kappa

Selected Work Experience

Everytown Law at Everytown for Gun Safety
Intern / May 2023–August 2023

New York University School of Law
Research Assistant to Professor Melissa Murray / August 2022–present
Provide updates on major cases and notable orders during the Supreme Court's October 2022 term.
Research Assistant to Professor Emma Kaufman / June 2022–September 2022
Conducted and summarized doctrinal and historical research on issues in administrative law and criminal law.
Research Assistant for the Center on Civil Justice / May–August 2022
Collected data on the disposition of appeals in New York state courts; edited a model ESI protocol focused on technologically assisted review of materials for responsiveness.

The Nueva School
Upper School English Teacher (Maternity Leave Replacement) / October 2019-June 2020
Taught a total of six sections of four different courses to students in 9th, 10th, 11th, and 12th grades. Worked with the English team to redesign syllabi and assignments after the pandemic required a switch to remote learning.

Literary Lab, Stanford University
Assistant Director / June 2016-June 2017
Managed about a dozen ongoing research projects involving text mining and machine learning.

Additional Information

Reading and basic speaking knowledge of French. Enjoy photography, watching professional basketball, and exploring the city with my spouse and dog. For more information on my previous career, please see attached "Publications and Professional Accomplishments" addendum.

Hannah Walser

718 South Percy Street, Philadelphia, PA 19147 | 252-312-6646 | hw3012@nyu.edu

Addendum: Publications and Professional Accomplishments

Academic Fellowships

Society of Fellows, Harvard University

Junior Fellow, July 2017–June 2021

Highly selective postdoctoral fellowship providing funding for independent research and writing.

Legal Scholarship

Works in Progress

True Threats as Promises

This Note argues that confusion regarding the appropriate role of subjective intent in true threat jurisprudence can be resolved by reconceptualizing threats as speech acts akin to promises.

Vagueness, Double Consciousness, and the Criminal Law

Forthcoming in Critical Analysis of Law (special issue on Cognitive Legal Humanities, eds. Prof. Maksymilian Del Mar and Prof. Simon Stern)

This Article identifies and historically situates "vague conduct prohibitions," a type of criminal law that requires individuals to anticipate the inferences that a law enforcement officer would draw about their intentions.

Selected Publications in Other Disciplines

Book

Writing the Mind: Social Cognition in Nineteenth-Century American Fiction
(Stanford University Press, 2022)

Selected Book Chapters and Peer-Reviewed Articles

Fooling: Deception Under Conditions of Epistemic Inequality
In Literature and its Language: Philosophical Aspects (Garry Hagberg ed., 2022)

Representing Race and Ethnicity in American Fiction: 1789-1920
12 J. Cultural Analytics 28 (2020) (with Mark Algee-Hewitt and J.D. Porter)

Under Description: The Fugitive Slave Advertisement as Genre
92 Am. Literature 61 (2020)

Proust's Genies: In Search of Lost Time *and Population Biology*
51 NOVEL: A Forum on Fiction 482 (2018)

The Behaviorist Character: Action Without Consciousness in Melville's "Bartleby"
23 Narrative 312 (2015)

Selected Conference Presentations and Invited Talks

Free Indirect Discourse on Trial
American Comparative Literature Association Annual Meeting, March 2023

The Syntax of Stereotyping
Computational Text Analysis and Historical Change Conference (Umeå University, Sweden), September 2019

Boundedness: Empty Chests and Missing Texts in Charles Brockden Brown and Beyond
Long Nineteenth Century and Modernism Colloquium (Harvard University), November 2018

Compatibilities: Quantification and Literary Study
Roundtable, Stanford Literary Lab (Stanford University), January 2018

The Monomaniacal Canon: Melville and American Eccentricity
Eleventh Annual International Melville Society Conference, June 2017

Notes Toward a Cultural History of the Homunculus
Philosophy and Literature Working Group (Stanford University), April 2015

Cognitive Demographies: Community Size and Psychic Opacity in Early American Literature
Society for Novel Studies Biennial Conference, April 2014

Name:	**Hannah Walser**
Print Date:	**06/03/2023**
Student ID:	**N19899177**
Institution ID:	**002785**
Page:	**1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Evelyn L Malave			
Criminal Law	LAW-LW 11147	4.0	B+
Instructor: Rachel E Barkow			
Torts	LAW-LW 11275	4.0	A-
Instructor: Christopher Jon Sprigman			
Procedure	LAW-LW 11650	5.0	A
Instructor: Samuel Issacharoff			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Maggie Blackhawk			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Constitutional Law	LAW-LW 10598	4.0	A-
Instructor: Melissa E Murray			
Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Evelyn L Malave			
Legislation and the Regulatory State	LAW-LW 10925	4.0	A-
Instructor: Emma M Kaufman			
Contracts	LAW-LW 11672	4.0	B
Instructor: Liam B Murphy			

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Colloquium on Constitutional Theory	LAW-LW 10031	2.0	A
Instructor: Daryl J Levinson Emma M Kaufman			
Criminal Procedure: Fourth and Fifth Amendments	LAW-LW 10395	4.0	B+
Instructor: Andrew Weissmann			
Furman Scholars Seminar	LAW-LW 10715	0.5	CR
Instructor: Barry E Friedman Emma M Kaufman			
American Legal History: The First Developing Nation?	LAW-LW 10820	4.0	A+
Instructor: Daniel Hulsebosch			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Melissa E Murray			
Theories of Discrimination Law Seminar	LAW-LW 12699	2.0	A+
Instructor: Sophia Moreau			
Theories of Discrimination Law Seminar: Writing Credit	LAW-LW 12849	1.0	A+
Instructor: Sophia Moreau			

	AHRS	EHRS
Current	14.5	14.5
Cumulative	44.5	44.5

Spring 2023

School of Law
Juris Doctor
Major: Law

Professional Responsibility in Criminal Practice Seminar	LAW-LW 10200	2.0	A-
Instructor: Jennifer Elaine Willis			
Furman Scholars Seminar	LAW-LW 10715	0.5	CR
Instructor: Barry E Friedman Emma M Kaufman			
Psychological Dimensions of Criminal Law	LAW-LW 11376	2.0	A
Instructor: Avani Mehta Sood			
Decisionmaking in the Federal Courts	LAW-LW 11836	4.0	A
Instructor: Harry T Edwards			
Sex Discrimination Law	LAW-LW 12271	3.0	A
Instructor: Elizabeth M. Schneider			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Melissa E Murray			

	AHRS	EHRS
Current	12.5	12.5
Cumulative	57.0	57.0

Staff Editor - Review of Law & Social Change 2022-2023

End of School of Law Record

Unofficial

New York University
A private university in the public service

School of Law

Emma Kaufman
Associate Professor of Law

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New York, NY 10012-1099
Office: (212) 998-6250
Cell: (717) 514-2147
E-mail: emma.kaufman@nyu.edu

June 12, 2023

Dear Judge,

I'm writing to recommend my wonderful student, Hannah Walser, who has applied for a clerkship in your chambers.

Hannah is no ordinary law student. She came to NYU Law School after spending three years at the Harvard Society of Fellows and completing her PhD in English at Stanford, where she won the school's dissertation prize and published a book with Stanford University Press. Hannah was admitted to the law school as a Furman Academic Scholar, the full-tuition scholarship we reserve for one or two entering students who show real promise as future legal academics. At NYU, she has excelled as a law student and research assistant. In the hallways, my colleagues describe Hannah as one of the smartest students they have encountered.

In short, students like Hannah are exceptionally rare. I'm thrilled to support her application.

I first met Hannah before she matriculated, when I interviewed her for the Furman Academic Scholarship. The Furman Program is rigorous and competitive. We admit only a very small number of students each year, and Furman Scholars routinely turn out to be the best students in the law school. (Furman Scholars also have post-graduate success. Almost all of them do serious appellate clerkships, and in the last two years alone NYU's Furman Fellows have received tenure-track jobs at Stanford, Columbia, Michigan, UVA, Georgetown, and NYU.) Although competition for the Furman Scholarship is stiff, selecting Hannah was easy. From the first minutes of her interview, it was apparent that Hannah was beyond smart.

Given our initial interaction, I was thrilled when Hannah was assigned to my required 1L course, Legislation and the Regulatory State (LRS). LRS can be challenging for many students. It is a crash course in statutory interpretation, structural constitutional law, and administrative law, full of unsettled doctrine and recent Supreme Court cases. LRS is a real conceptual departure for 1Ls who have been taking common-law courses, so it becomes a class where the most intellectually curious and serious students can rise to the occasion. Hannah did not disappoint. She wrote a beautiful exam and answered every cold call with

precision. Unsurprisingly, she has also been fabulous in the weekly seminar for Furman Scholars, where she offers incisive comments on other students' papers. She was equally sharp as a student in the Constitutional Law Colloquium, which I co-teach with my colleague Daryl Levinson.

Now, from her resumé and my description thus far, Hannah might seem almost too intellectual —like a person who will make an amazing academic but would less obviously be a diligent, capable law clerk. But I have also gotten to know Hannah as a research assistant, and, happily, I can report that that impression would be wrong.

Hannah has taken pains to train herself as a doctrinal lawyer. She sought out a position as a research assistant for my colleague, Melissa Murray, so that she could follow and brief major Supreme Court cases every week. In the Furman Scholars seminar, she elected to write a note on First Amendment standards after *Elonis v. United States*, 575 U.S. 723 (2015), a case concerning the criminalization of threats. As my research assistant, Hannah has proven to be an excellent writer and legal researcher. She has delivered long memos on complex doctrines, with clean citations and sharp analysis. She is a hard worker, who is easy to manage. Hannah would, in sum, be the sort of law clerk who would make chambers easier to run.

I could go on, but I hope my admiration for this student is apparent. Hannah is a brilliant person who also happens to be a sharp legal thinker and a self-reflective, mature, and kind person. I know she would learn a tremendous amount from working for you, and I hope you'll take a serious look at her application.

Please do not hesitate to reach out if I can offer any additional information.

Sincerely,

New York University
A private university in the public service

School of Law

40 Washington Square South
New York, New York 10012-1099
Telephone: (212) 998-6160
Facsimile: (212) 995-4894
Email: liam.murphy@nyu.edu

Liam Murphy
Herbert Peterfreund Professor of Law
& Professor of Philosophy

June 5, 2023

Dear Judge

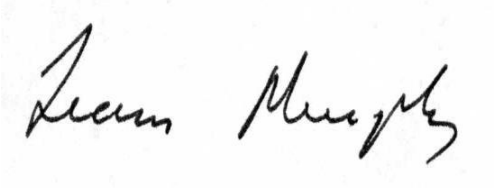
I write to recommend HANNAH WALSER to you for a clerkship in your chambers. I first met Hannah as part of the interview process for the prestigious Furman Academic Scholarship program at NYU School of Law. She was coming to us as an accomplished scholar in the fields of English and Philosophy (one of my own fields), fresh off the extremely prestigious Junior Fellowship at Harvard and with a book based on her dissertation in production at Stanford University Press. My task in our interview over zoom was to figure out whether there was any promise to her plan to bring her rather unique combination of disciplinary skills to bear on questions of law and legal theory. I concluded that there certainly was. I later had Hannah in my contracts class, where she was very valuable in class discussions, and I have kept up with her progress through law school generally. I know her well.

Hannah has already produced a number of fascinating pieces of legal scholarship that vindicate her Furman Scholarship. In a seminar paper written for Professor Sophia Moreau's seminar on discrimination law, she draws on her expertise in "social cognition" to show that some people, specifically members of minority groups, are disproportionately burdened by the need to "read others' minds"—to determine whether others may be perceiving them, for example, as threatening. It is a fascinating contribution to scholarship on discrimination and social equality. For her Student Note, she is contributing to the literature on true threat doctrine by drawing on her expertise in what is called speech act theory. This work is very promising as it may resolve the tension courts have perceived between the *mens rea* requirement and the fact that what is a threat turns on the reasonable interpretation of the recipient. Lastly, Hannah has, forthcoming in a collection with distinguished editors, a second piece that draws on her work on social cognition in her book, this time applying these insights issues of vagueness in the criminal law.

With all this, it is obvious enough that Hannah has an excellent mind and is an excellent writer. She is clearly going to be a very strong candidate for fellowships after law school that lead to academic careers. But it is natural to wonder whether she is also excellent at the kind of writing that is relevant to a clerkship. The answer is a clear Yes. Working in a seminar on decision-making in the federal courts, with no less an expert than Judge Harry Edwards, Hannah produced the excellent piece of legal argument that she has submitted as her writing sample. That she received an A from Judge Edwards in this seminar is obviously an excellent indicator of her potential as a clerk, especially in appellate chambers. And her record overall establishes her as a solid doctrinalist—note her "A" in civil procedure from Professor Issacharoff, for example. It is my sense, then, that Hannah has achieved everything we could have hoped for when we admitted her to the Furman program. She is using her existing intellectual strengths to take legal theory in new directions. But she is also becoming a first-rate lawyer. This is exactly the kind of interdisciplinary success that the Furman program aspires to, and I do believe that it will make her an unusually valuable clerk.

Hannah's intelligence, diligence, legal knowledge and acumen, and writing skills are all first rate. Equally important, she enjoys working with others, which she does a lot of in the Furman program and on her journal. I have not seen this collaboration first hand, but I know her style in discussion well. She is clear, constructive, and not at all pretentious. Her work teaching constitutional law to high school students shows that she doesn't want to share her ideas only with a small number of scholars in the ivory tower. She has a great career as a public-facing legal intellectual ahead of her, and the qualities that will make her excel at that are very much, I believe, ones that will also make her excel as a clerk.

Sincerely,



NYU | LAW

MELISSA MURRAY
Frederick I. and Grace Stokes
Professor of Law

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40 Washington Square South
New York, NY 10012
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M: 510 502 1788

melissa.murray@law.nyu.edu

June 5, 2023

Dear Judge:

I write to recommend **Hannah Walser**, a rising third-year student at NYU Law, for a clerkship in your chambers during the 2024-25 term. An honors graduate of the University of Chicago and Stanford University (Ph.D. in English), Hannah was a student in my Constitutional Law class in Spring 2022 and served as my research assistant in the 2022-23 academic year. She is brilliant, humble, diligent, and extremely capable. As a former law clerk to two federal judges (Justice Sonia Sotomayor and Judge Stefan R. Underhill), I am confident that she will be an excellent clerk and a welcome addition to your chambers.

I first met Hannah when she enrolled in my Spring 2022 Constitutional Law class. There, she distinguished herself with her evident enthusiasm for the subject matter, her breadth of historical knowledge, and her poised self-presentation. I was not surprised when Hannah wrote a very strong exam, earning an A- in the course.

Based on her terrific work in my class, in Fall 2022, I hired Hannah as a research assistant. In that capacity, she was tasked with researching all of the cases that the Supreme Court would hear on the merits docket in October Term 2022, as well as any shadow docket dispositions or other miscellaneous issues that arose regarding the Court. Again unsurprisingly, Hannah excelled as a research assistant. She consistently delivers research and writing that is of exceedingly high quality. For example, in her summaries of the term's Supreme Court cases, Hannah precisely characterized the legal issues and carefully framed the procedural posture and stakes for the individual parties. Moreover, Hannah offered a detailed account of the arguments made by amici—sometimes dozens or scores of them—that captured the doctrinal disagreements, battles over statutory interpretation, and contested historical claims behind the question presented.

Most impressively, Hannah is an unusually quick reader. But it is not just her speed that allows her to cogently survey the landscape of amicus briefs and other filings. Her particular skill lies in extracting the essential kernel of an argument from a mountain of prose and identifying the unstated foundations on which that argument rests. This skill bears fruit when Hannah dives into a case record and emerges with a lucid understanding of the fault lines in a legal dispute.

Hannah honed this ability to capture the essence of a debate in her previous career as a literary scholar and writing teacher. Whether she was teaching her students how to construct persuasive essays or positioning her own research in an academic conversation, treating others' arguments with respect and rigor was essential. And she continues to apply this ethos in her work for me, as well as in her work as a Furman Scholar (NYU Law's program aimed at students pursuing careers in legal academia).

Many of Hannah's other strengths similarly derive from her substantial (and, for a law student, atypical) work experience. In addition to being a strong writer, Hannah is exceptionally *productive*. During the 2022-23 academic year alone, she has produced two student note-length essays, a twenty-page "opinion" for an appellate court simulation class, and tens of thousands of words of Supreme Court research for me, among many other smaller projects. (This was all *after* Stanford University Press published her book—a study of nineteenth-century American literature—in July 2022.) Whatever the project at hand, Hannah hits the ground running and produces meticulous, elegant work product.

Hannah's communication skills, not only in writing but in everyday interactions with employers and peers, owe a great deal to her time as the assistant director of a research organization at Stanford, where she managed multiple research assistants, steered collaborative projects toward publication, and organized workshops and conferences that brought together scholars from multiple disciplines. She has applied this training to her current work as a Senior Articles Editor for the *NYU Review of Law and Social Change*, where she has helped organize the review's annual symposium.

Hannah's capacity to work independently and to manage her time wisely can be traced back to the demands of writing a Ph.D. dissertation. And her willingness to improvise stems from her time in the classroom: nothing convinces a person of the importance of flexibility quite like transitioning eighty high schoolers to remote learning during the onset of a global pandemic, as Hannah did in Spring 2020.

It is worth noting that Hannah came to NYU Law after a career in teaching, the completion of her doctorate, and a stint at the prestigious Harvard Society of Fellows. She is a grown-up in every sense of the word! Throughout her time at NYU, she combined law school with a two-hour commute from Philadelphia and her own family responsibilities. She is able to balance multiple commitments without sacrificing the quality of her work.

And, as I have noted, the quality of her work is extraordinary—elegantly written and meticulously researched. She has amassed an enviable academic record at NYU Law, demonstrating particular strengths in complicated doctrinal areas like employment discrimination and the First Amendment. Indeed, her student note on the "true threat" doctrine not only evinces her burgeoning fascination with the First Amendment, but it is also one of the most interesting pieces of student writing that I have encountered in almost twenty years of law teaching.

Notably, Hannah's research makes clear that while she has a strong moral compass and a deeply held value system, she is not rigid in her thinking. Indeed, Hannah's past and present careers are united by a firm belief in the power of a well-made argument to change minds. Nowhere is this power more evident than on the appellate bench, and I can imagine no better setting for Hannah's unique combination of diligence and creativity.

I realize that in praising Hannah so lavishly, I run the risk of portraying her as an automaton. That is not the case. Hannah is a personable colleague who treats others kindly and with great respect. By her own admission, she is a bit of a nerd, with obscure interests in experimental literature, logic puzzles, and philosophy podcasts. But she owns her nerdiness and is a warm and unpretentious conversationalist who puts others at ease. There are few sure bets in law school, but Hannah Walser is one of them. I hope you will give her application close consideration as you make your personnel

selections. If I can be of further assistance, please feel free to contact me at melissa.murray@law.nyu.edu or via telephone at (212) 998-6440.

Sincerely,

Sincerely Yours,

Melissa Murray
Frederick I. and Grace Stokes Professor of Law

WRITING SAMPLE

Hannah Walser
718 South Percy Street
Philadelphia, PA 19147
hw3012@nyu.edu

Below, please find an opinion for *Zukerman v. United States*, No. 21-5283 (D.C. Cir. 2023), which I wrote for Judge Harry T. Edwards's appellate court simulation class. Each student in the class drafted an opinion for one of three recent cases in the Court of Appeals for the D.C. Circuit; we reviewed the case record with care and listened to oral argument but, of course, did not read the court's actual opinion until after the course had ended. This is the final product that I submitted to Judge Edwards; I have not revised the document to incorporate his feedback, and although my fellow "panelists" signed off on the opinion, they did not edit it.

Writing Sample 1 Hannah Walser

Zukerman v. United States Postal Service

No. 21-5283 (D.C. Cir. 2023)

INTRODUCTION

In 2015, artist Anatol Zukerman sought to print 40 stamps featuring one of his original paintings using the United States Postal Service's ("USPS" or "Postal Service") now-defunct customized postage program. Zazzle, one of the third-party vendors that had contracted with USPS to print customized postage, rejected Mr. Zukerman's design, citing its "politically oriented" imagery and text. E-mail from Zazzle to Anatol Zukerman (Apr. 27, 2015) at 1, Joint Appendix ("J.A.") 250. Mr. Zukerman and Charles Kraus Reporting, LLC (together "Plaintiffs") sued the Postal Service, alleging unlawful viewpoint discrimination. After several years of litigation, during which USPS first modified the customized postage program's content guidelines and then eliminated the program altogether, the District Court found that USPS had engaged in viewpoint discrimination in violation of the First Amendment. Neither party challenges that holding here. In granting Zukerman's motion for summary judgment, however, the District Court declined to order USPS to print his stamps, instead entering a declaratory judgment holding USPS liable to Zukerman. We are asked to determine whether the court erred in denying injunctive relief, granting declaratory relief, or both. Because we find that the District Court did not abuse its discretion in either respect, we affirm the judgment below.

I. BACKGROUND

[Please note: I have omitted the "Background" section, which summarized the facts and procedural posture of the case, in the interest of space. I will be happy to share the full opinion upon request.]

II. ANALYSIS

A. Standard of Review

We review a district court's grant or denial of an equitable remedy for abuse of discretion. *Morgan Drexen, Inc. v. CFPB*, 785 F.3d 684, 689 (D.C. Cir. 2015). We recognize, however, that "[t]he abuse-of-discretion standard . . . is 'a verbal coat of many colors.'" *Wash. Metro. Area Transit Comm'n v. Reliable Limousine Serv., LLC*, 776 F.3d 1, 4 (D.C. Cir. 2015) (quoting Henry J. Friendly, *Indiscretion About Discretion*, 31 EMORY L.J. 747, 763 (1982) (internal alteration omitted)). When we review a trial court's decision to grant or deny equitable relief, the standard is generous: across multiple contexts, we have stressed that abuse-of-discretion review "does not permit us to substitute our judgment for that of the trial court." *Am. Council of the Blind v. Mnuchin*, 878 F.3d 360, 371 (D.C. Cir. 2017) (quoting *United States v. Mathis-Gardner*, 783 F.3d 1286, 1288 (D.C. Cir. 2015)). We must not "disturb the trial court's remedial choice unless there is no reasonable basis for the decision." *SEC v. First City Fin. Corp*., 890 F.2d 1215, 1228 (D.C. Cir. 1989).

B. Threshold Issues

1. Jurisdiction

We have jurisdiction over this appeal from a final order of the U.S. District Court of the District of Columbia. *See* 28 U.S.C. § 1291.

2. Standing

Before reaching the merits, we must "satisfy [ourselves]" that Plaintiffs have standing under Article III of the U.S. Constitution. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). "For each form of relief sought," a plaintiff bears the burden of establishing the three elements of Article III standing: (1) "an injury in fact" that is (2) "fairly traceable" to the defendant's conduct

and (3) "likely to be redressed by a favorable judicial decision." *Cierco v. Mnuchin*, 857 F.3d 407, 416 (D.C. Cir. 2017) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

City of L.A. v. Lyons guides our assessment of standing to seek injunctive relief. 461 U.S. 95 (1983). Unlike the respondent in that case, however, whose theory of standing depended on the possibility of "future injury," *Lyons*, 461 U.S. at 105, Plaintiffs argue that their injury is ongoing. As long as some people with customized political stamps can use them as valid postage, but Zukerman cannot, his injury continues. *See* Recording of Oral Argument at 2:30-2:50 ("This is not a case about a recurrent injury. It is an ongoing injury. . . . Other people still have customized postage that they can use."). This is precisely the injury that we recognized in *Zukerman III*, which binds us under the law-of-the-case doctrine. *See U.S. v. Alaw*, 327 F.3d 1217, 1220 (D.C. Cir. 2003) ("[L]aw-of-the-case doctrine holds that decisions rendered on the first appeal should not be revisited on later trips to the appellate court.") (internal quotation marks omitted); *see also LaShawn A. v. Barry*, 87 F.3d 1389, 1394 (D.C. Cir. 1996) (en banc) (no "jurisdictional exception" to law-of-the-case doctrine).

Though the Postal Service does not challenge Plaintiffs' standing outright, it hints that the intervening closure of the forum—that is, the customized postage program—renders Plaintiffs' injury completed rather than ongoing. *See* Appellees' Br. at 35 (framing the effects of Zazzle's discrimination as "vestigial"), 48 (Plaintiffs' requested order would be "inappropriate . . . when the relevant forum had been conclusively closed"). Plaintiffs, by contrast, claim that the forum remains open as long as USPS "continues to permit circulation of postage issued under a concededly viewpoint discriminatory policy." Appellants' Reply Br. at 13. We find Plaintiffs' argument more compelling: unlike the display area in *Pulphus v. Ayers*—which, by the time it

reached this Court, no longer featured any art from the competition in which plaintiffs had participated—the forum of valid U.S. postage still includes improperly approved political stamps. *Pulphus v. Ayers*, 909 F.3d 1148, 1152 (D.C. Cir. 2018) (dismissing appeal as moot). But even if we adopted USPS's narrower definition of the relevant forum, nothing about the logic of this Court's 2020 decision indicates that Plaintiffs' injury depends on the *future* approval of customized postage. Instead, the injury is rooted in Zazzle's viewpoint discrimination at the time of Plaintiffs' first complaint, and neither the 2018 Rule nor the closure of the customized postage program altered it.

The "likelihood of substantial and immediate irreparable injury" that *Lyons* demands, then, is satisfied here. *Lyons*, 461 U.S. at 111 (quoting *O'Shea v. Littleton,* 414 U.S. 488, 502 (1974)). In contrast to the facts of *Lyons*, Plaintiffs' injury is not speculative nor even merely "likely," but current and supported by evidence in the record. *See* First Mem. Op. at 12-14, J.A. 29-31 (summarizing the evidence of political stamps in circulation). And "[t]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Plaintiffs also easily satisfy the other two prongs of Article III standing: causation and redressability. Zazzle's rejection of Zukerman's stamp design made it impossible for him to obtain and use customized postage, causing his First Amendment injury. As for redressability, even the Postal Service now concedes that the District Court could—albeit at "the outer perimeter of [its] equitable discretion"—order USPS to print Zukerman's stamps. Appellees' Br. at 48. The *practical* feasibility of those remedies is, as this Court noted in its previous opinion, "a matter relating to the exercise rather than the existence of judicial power." *Zukerman III*, 961

F.3d at 444 (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). Having resolved the latter issue, we now turn our attention to the former.

C. Merits

1. Injunctive Relief

At the core of Plaintiffs' argument lies what they call the "complete relief" principle: when a court finds an "ongoing constitutional violation," it is obligated to "completely relieve" it. Appellants' Br. at 24. In such cases, Plaintiffs assert, "there is no role for judicial discretion" in the granting of equitable relief. Appellants' Reply Br. at 4; *see also id.* at 11 ("The district court's conceded failure to grant . . . complete relief resolves this appeal.").

Plaintiffs are mistaken for two main reasons. First, they misconstrue a line of Supreme Court doctrine on the *scope* of injunctive relief as a *requirement* that injunctive relief must be granted for certain constitutional violations. The case law does not support this inference, which would run against the grain of more recent Supreme Court precedent emphasizing that injunctions do not issue as of right. Second, Plaintiffs' "analogous" cases from other circuits speak, at most, to the possibility of courts issuing "complete relief" for First Amendment violations, not the necessity of doing so. Appellants' Br. at 43. And, in any event, these comparator cases turned on materially different circumstances.

Because we decline Plaintiffs' invitation to adopt a "complete relief" requirement, we review the District Court's denial of injunctive relief by considering the four injunction factors articulated in *eBay v. Merc Exchange, LLC*, 547 U.S. 388 (2006).:

> [To obtain an injunction, a plaintiff must show] (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

Id. at 391. We find that the District Court considered the appropriate factors, weighed them reasonably and soundly, and explained its decision adequately.

a. No "complete relief principle" required the District Court to grant injunctive relief.

Plaintiffs rely heavily on a line of Supreme Court cases holding that equitable remedies must be precisely tailored to redress the wrongs suffered by the plaintiff. *See* Appellants' Reply Br. at 3 (citing *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994); *Dayton Bd. Of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977) ("[A] federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation.") (quoting *Hills v. Gautreaux*, 425 U.S. 284, 293-94 (1976)) (internal quotation marks omitted); *and Carter v. Jury Comm'n of Greene Cty.*, 396 U.S. 320, 340 (1970)).

As the District Court accurately noted, however, the Court has primarily used the language of "complete relief" to impose a ceiling, rather than a floor, on injunctive relief. *See* Second Mem. Op. at 3, J.A. 50. The clearest statement of the rule frames complete relief as an upper limit on the scope of an injunction, telling us that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Significantly, none of Plaintiffs' key Supreme Court cases held that a lower court had issued insufficient injunctive relief. Indeed, *Madsen*, a keystone of Plaintiffs' argument, did the opposite, striking down several provisions of a Florida Supreme Court order as "sweep[ing] more broadly than necessary to accomplish the permissible goals of the injunction." *Madsen*, 512 U.S. at 776. In *Carter*, the only one of these cases in which appellants claimed that the lower court's injunction was inadequate rather than overbroad, the Court explicitly declined to order expanded relief. *See Carter*, 396 U.S. at 336-37, 339-40

(declining to disturb the district court's remedial order and noting the lower federal courts' competence "to fashion detailed and stringent injunctive relief").

Even if we accept plaintiffs' reading of the "complete relief" principle as determining a lower *and* an upper bound for injunctive relief, moreover, the fact remains that these cases concern efforts to tailor the *scope* of an injunction that a lower court has already issued. We see no justification for reading a requirement that injunctive relief *must* issue into these cases modifying the inclusiveness, specificity, or geographic extent of an injunction. None of Plaintiffs' key cases held that a trial court abused its discretion by failing to grant an injunction; at most, they upheld the breadth of the relief already issued or faulted a court for an unworkably vague injunction. *See, e.g.*, *Califano*, 442 U.S. at 702 (nationwide relief is appropriate because "the scope of injunctive relief is dictated by the extent of the violation established"); *Morrow v. Crisler*, 491 F.2d 1053, 1055 (5th Cir. 1074) (en banc) ("the District Court must order additional specific relief" because racial discrimination persisted after its previous order).

It would be especially surprising if Supreme Court precedent required an injunction to issue in this case, as Plaintiffs contend that it does, because the Court has consistently characterized injunctions as "drastic and extraordinary remed[ies], which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010) (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-312 (1982)); *see also Winter v. NRDC*, 555 U.S. 7, 22 (2008) (describing injunctive relief as "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief"), *and Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987). This may be dicta (although the "complete relief" principle is too), but it is dicta that rises to the level of a leitmotiv: injunctions are "never awarded as of right." *Winter*, 555 U.S. at 24. Clear statements such as these, when combined with a consistent

pattern of paring down (rather than expanding) injunctions, strongly suggest that declining to issue an injunction—even when a constitutional violation is at issue—cannot be a *per se* abuse of discretion.

Plaintiffs cite injunctions like those issued in *Ctr. for Investigative Reporting v. SEPTA*, 975 F.3d 300 (3d Cir. 2020) ("*CIR*"), and *Ne. Pa. Freethought Soc'y v. County of Lackawanna Transit Sys.*, 938 F.3d 424 (3d Cir. 2019) ("*Freethought*"), as successful applications of the complete relief principle. The fact that courts enjoined ongoing viewpoint discrimination in those cases and others does demonstrate, as Plaintiffs point out, that trial courts at least sometimes have the legal authority to do so. *See* Appellant's Br. at 43-44 n. 4 (surveying cases enjoining defendants to give plaintiffs access to a forum). But this gets Plaintiffs no closer to proving that courts are *required* to do so. Moreover, the reasoning of two key cases on which Plaintiffs rely, *CIR* and *Freethought*, belies Plaintiffs' contention that an injunction must issue as a matter of law upon finding an ongoing First Amendment violation. In both cases, after winning on the merits, the plaintiff was still required to demonstrate that "it [was] entitled to a permanent injunction as a matter of discretion." *CIR*, 975 F.3d at 317 (quoting *Free Thought*, 938 F.3d at 442). And in both cases, the court proceeded to apply the four *eBay* injunction factors, just as the District Court did here. *CIR*, 975 F.3d at 317; *Freethought*, 938 F.3d at 442.

Of course, the District Court's *eBay* analysis resulted in a different outcome than the Third Circuit's; to understand whether that difference is reasonable, we must look to the factual circumstances that set Zukerman's case apart from *CIR* and *Freethought*. Before we turn to the injunction factors themselves, though, we emphasize once again that we are reviewing an injunction denied by the District Court, not determining whether we would grant injunctive relief in their place. Our role is thus considerably more restricted than that of the Third Circuit in *CIR*

and *Freethought*—two cases in which appellants challenged the *legal* conclusions of the district court. When the Third Circuit found for appellants on the merits, after a thorough review of the factual record, it was free to "determine the appropriate remedy" by applying the injunction factors for the first time. *CIR*, 975 F.3d at 317; *see also Ctr. for Investigative Reporting v. SEPTA*, 337 F. Supp. 3d 562 (E.D. Pa. 2018) (not considering the injunction factors), *and Ne. Pa. Freethought Soc'y v. Cnty. of Lackawanna Transit Sys.*, 327 F. Supp. 3d 767 (M.D. Pa. 2018) (same). Here, however, we consider the *eBay* injunction factors only for the purpose of determining whether the District Court applied them reasonably. We find that it did.

b. The District Court did not abuse its discretion when weighing the injunction factors.

Neither party challenges the District Court's finding that Plaintiffs satisfied the first two injunction factors, irreparable injury and absence of a remedy at law. Only the third and fourth injunction factors, which require the trial court to assess the balance of hardships between the parties and consider the public interest, are in dispute here. Contrary to Plaintiffs' claim that "every factor here points the same direction," Appellants' Br. at 27, the trial court's reasoning clearly indicates that both the third and fourth factors weigh against injunctive relief in this case. *See* First Mem. Op. at 26, J.A. 43. We find that conclusion to be sound in light of several facts.

To begin with, as the District Court observed, that "the number of political designs that the vendor approved . . . was infinitesimal." Second Mem. Op. at 2, J.A. 49. While the adjective may be a bit exaggerated, we agree that the record shows only a modest number of indisputably "political" stamps: six designs totaling twenty-six sheets of postage. *Id.* at 12, J.A. 29. Plaintiffs' best evidence that Zazzle approved vastly greater numbers of political designs was the vendor's statement to USPS that the 2018 Rule's "substantial change" in guidelines would impact many

previously valid designs. Pls. SUMF ¶ 93, J.A. 299-300. Without further support, however, this statement can reasonably be read as the complaint of a vendor that was losing some of the autonomy it had been afforded—not a careful estimate of previously printed political stamps.

The apparently small number of offending stamps in existence goes to the gravity of Plaintiffs' hardship. Plaintiffs state, and we agree, that "even a single outstanding piece of political customized postage would mean that Plaintiffs' injuries continue." Appellants' Br. at 39. But the trial court is not only permitted but required to weigh the seriousness of the hardships faced by the plaintiff against the hardships to the defendant that an injunction would entail. If relatively few political stamps were wrongly approved (and perhaps even fewer printed and used), and if no new customized postage (political or otherwise) *will* ever be approved, then the forum from which Zukerman was excluded is, if not closed, steadily dwindling.

The termination of the customized postage program is important for another reason: it significantly diminishes the public interest in this injunction. Citing *Nken v. Holder*, Plaintiffs suggest that the public interest necessarily aligns with that of the plaintiff when "the Government is the opposing party." Appellants' Br. at 29; *see Nken v. Holder*, 556 U.S. 418, 435 (2009) ("when the Government is the opposing party," the third and fourth injunction factors "merge"). But Plaintiffs misread *Nken*. That case's analysis suggested just the opposite: that the public interest "merges" with that of the Government. *Nken*, 556 U.S. at 436 ("There is always a public interest in prompt execution of removal orders[.]"). When a plaintiff is bringing a constitutional challenge, of course, the public's interest in vindicating constitutional rights may act as a counterweight to its interest in the smooth functioning of the popularly elected branches of Government. In the unusual factual circumstances of this case, however, the District Court recognized that the public interest weighed much more heavily on the Government's side.

The District Court acknowledged that "it is always in the public interest to prevent the enforcement of unlawful speech restrictions," but noted that, in this case, "USPS is not currently enforcing *any* restrictions on private speech." First Mem. Op. at 26, J.A. 43 (quoting *Guffey v. Duff*, 459 F. Supp. 3d 227, 255 (D.D.C. 2020). Ordinarily, the public's interest in a First Amendment case overlaps with that of the plaintiff insofar as the public contains current or prospective speakers whose speech is restricted by the challenged policy. *See, e.g.*, *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1230 (11th Cir. 2017) (identifying "the deprivation of Barrett's and all other potential speakers' constitutional right to engage in free speech" as a hardship outweighing defendant's inconvenience); *CIR*, 975 F.3d at 317 ("[T]he hardship to CIR is considerable in that the current Advertising Standards impermissibly deprive it of its, *and other potential speakers'*, constitutional rights to engage in free speech[.]") (emphasis added). With no policy left to challenge, an injunction ordering USPS to print Zukerman's stamps is unlikely to benefit anyone but Zukerman.

The District Court could reasonably find, however, that such an injunction would *harm* both USPS and the public. Nothing in the record, to be sure, suggests that USPS lacks the resources or mechanical capability to print Zukerman's stamp. And we agree with Plaintiffs that the District Court's concerns about USPS's legal authority to print the stamp may have been misplaced, although Plaintiffs themselves admit that the court did not "rely on" this argument in its injunction analysis. Appellants' Br. at 41; *see also Carter*, 396 U.S. at 336-37 (noting the federal courts' broad power to craft "detailed and stringent injunctive relief"). But the District Court recognized another, more abstract hardship to the Postal Service: printing Zukerman's stamps would "further entangl[e] USPS in political speech." Second Mem. Op. at 2, J.A. 49.

USPS has its own institutional reasons for wanting to avoid such entanglement, and their conduct has indicated a sincere desire to avoid endorsing political speech. *See* First Mem. Op. at 28, J.A. 45 (citing *Del Gallo v. Parent*, 557 F.3d 58, 73 (1st Cir. 2009) (recognizing the Postal Service's "particularly weighty" need to distance itself from partisan politics)). But the need to avoid political entanglement also bears on the fourth injunction factor. While there are no prospective speakers being harmed by a government policy here, there may be other thwarted speakers who, like Zukerman, experienced viewpoint discrimination under the customized postage program. If Zukerman's injury rests in the continued existence of political stamps that were improperly approved under the customized postage program, then presumably others who were denied access to that forum share the same injury. But placing *more* political postage into circulation by forcing USPS to print Zukerman's stamp would only make their injury worse. Plaintiffs' interests are not aligned with but, on the contrary, actively opposed to those thwarted speakers' interests.

Having determined that the District Court reasonably analyzed the four *eBay* factors to deny an injunction here, we need not decide whether the court was wrong to consider the relative fault of USPS and Zazzle. *See* Appellants' Br. at 36 (arguing that "[t]he proper injunction factors do not encompass" blameworthiness). That error, if it is one, would be harmless, because the District Court's other reasons for denying the injunction are legally sufficient.

2. Declaratory Relief

Having concluded that the District Court did not abuse its discretion by declining to issue injunctive relief, we are not sure whether Plaintiffs would still want us to vacate the declaratory judgment below as "error." Plaintiffs' views on this point seem to have shifted: their reply brief declares, not that the declaratory judgment itself was an error, but that the court's decision to

grant it "underscores" and "highlights" the error of denying injunctive relief. *Compare* Appellants' Reply Br. at 9-10 *with* Appellants' Br. at 45-47 (arguing that the declaratory judgment was a legal error and an abuse of discretion). Taking Plaintiffs at their word, however, we nonetheless find that their arguments for the impropriety of declaratory relief lack merit.

a. The District Court's declaratory judgment clarified the legal issue and served the public interest.

In asserting that declaratory judgments must not issue when they "serve [no] useful purpose," Plaintiffs misread a host of situation-specific dicta as a general rule. Appellants' Br. at 47 (quoting *Spivey v. Barry*, 665 F.2d 1222, 1235 (D.C. Cir. 1981)). On close examination, the cases cited by Plaintiffs in which this Court found declaratory judgment to be inappropriate had a number of problematic features not present here. In *Spivey*, for instance, this Court emphasized that remanding to the trial court for a declaratory judgment would require "a theoretical inquiry into the extent of defendants' past" liability. *Spivey*, 665 F.2d at 1235. Here, the precise nature and extent of USPS's liability is already known (and unchallenged by the Postal Service itself). Nor did the District Court's declaratory judgment involve "unnecessary intervention into the structure of [local] government." *Id*. Unlike the patent determination at issue in *Hanes Corp. v. Millard*, determining liability for constitutional violations is the responsibility, not of an administrative agency or an independent arbitration board, but of the federal courts. *Hanes Corp. v. Millard*, 531 F.2d 585, 596 (D.C. Cir. 1976). And we denied declaratory judgment in *NBC-USA Hous., Inc. v. Donovan*, 674 F.3d 869 (D.C. Cir. 2012), because the case had become moot—but that argument would be inaccurate here even if Plaintiffs had attempted to make it.

On a more global level, the Circuit precedent on which Plaintiffs rely is largely unresponsive to the question before us. Plaintiffs' two primary cases, *Spivey* and *President v. Vance*, 627 F.2d

353 (D.C. Cir. 1980), were decided in the 1980s, a period in which this Court applied "a quite searching review" to "the grant or denial of declaratory relief by a trial court." *Hanes*, 531 F.2d at 591. By the mid-1990s, however, the Supreme Court clarified that review for abuse of discretion is "more consistent with" the Declaratory Judgment Act "because facts bearing on the usefulness" of that remedy "are peculiarly within [the trial court's] grasp." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 289 (1995); *see* 28 U.S.C. § 2201(a) (permitting federal courts to "declare the rights and other legal relations of any interested party seeking such declaration" except in a few subcategories of cases). This Court subsequently acknowledged "the uniquely discretionary nature of the Declaratory Judgment Act." *Jackson v. Culinary Sch.*, 59 F.3d 254, 256 (D.C. Cir. 1995); *accord Morgan Drexen*, 785 F.3d at 696. Even Plaintiffs' pre-*Wilton* cases, involve not the review of a trial court's declaratory judgment but this Court's decision not to issue one in the first instance. (In the one such case in which we reviewed a trial court's denial of declaratory judgment, we upheld it. *President*, 627 F.2d at 364 n. 76.) Not one of Plaintiffs' cases held that a trial court's grant of declaratory relief had been an abuse of discretion.

We approach the District Court's declaratory judgment, then, with deference toward its grasp of the material facts and its sense of "practicality and wise judicial administration." *Morgan Drexen*, 785 F.3d at 696 (quoting *Wilton*, 515 U.S. at 288). Although this Court has offered a "non-exclusive" list of potentially relevant considerations for declaratory judgment, *id.*, we have not insisted that trial courts consider them, instead invoking the general principles that the trial court's discretion should be "exercised in the public interest" and should "strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief." *Hanes*, 531 F.2d at 591-92 (quoting *Eccles v. Peoples Bank*, 333 U.S. 426, 431 (1948)).

The District Court's declaratory judgment met these standards. Even though declaratory judgment itself was not "the desired relief," it is far from the useless formality that Plaintiffs describe. The judgment registers the injustice that was done; it holds USPS to account for its misconduct, disincentivizing future viewpoint discrimination; and it serves the public interest by demonstrating that First Amendment violations must not be allowed to pass unnoticed. Once again, *Aladdin's Castle* guides us: "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of that practice." *Aladdin's Castle*, 455 U.S. at 289. Determining and declaring the legality—or rather illegality—of USPS's conduct toward Zukerman is precisely what the District Court did here. This was no abuse of discretion; it simply was not everything the Plaintiffs wanted.

III. CONCLUSION

For the reasons set forth above, we affirm the judgment of the District Court.

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Date of BA/BS	**May 2018**
JD/LLB From	**Notre Dame Law School** **http://law.nd.edu**
Date of JD/LLB	**May 23, 2021**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Notre Dame Law Review**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**Texas**

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

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June 5, 2023

The Honorable Juan R. Sánchez
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

RE: Clerkship Application

Dear Chief Judge Sánchez,

I am a 2021 graduate of Notre Dame Law School and currently work as a litigation associate at Jackson Walker LLP in Dallas. I am writing to apply for a clerkship in your chambers beginning in August 2024.

Enclosed, please find my resume, transcript, and writing sample. You will also receive letters of recommendation from the following people:

Prof. Jennifer Mason McAward	Dean Emerita Patricia O'Hara	James McFall
Notre Dame Law School	Notre Dame Law School	Jackson Walker LLP
mason1@nd.edu	pohara1@nd.edu	jmcfall@jw.com
(574) 631–7528	(574) 631–5344	(210) 473–7897

In the meantime, they would welcome a discussion of my candidacy with you.

I would be honored to clerk in your chambers and hope to have the opportunity to visit with you in person about my application. Thank you for your consideration.

Respectfully,

Hannah E. Walsh

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EXPERIENCE

Jackson Walker LLP, Dallas, Texas
Associate *September 2021–Present*

- Represent clients in federal court, state court, and arbitration proceedings in connection with a variety of litigation matters, including breach of contract, business torts, personal injury, and trademark infringement
- Draft numerous dispositive and non-dispositive motions, including motion for summary judgment in multimillion-dollar products liability suit
- Communicate directly with clients and opposing counsel on a daily basis to identify and resolve potential issues
- Manage and assist with all stages of written discovery, document review, and related motion practice
- Argue non-dispositive motions in state court and FINRA proceedings
- Deposed plaintiff in personal injury defense case and interviewed witnesses to aid factual investigation
- Worked with team to procure temporary injunction on novel constitutional claims against state entity and successfully defended relief on petition for writ of mandamus to Texas Supreme Court
- Prepared amicus brief on behalf of international human rights organization in *Gonzalez v. Google*, U.S. Supreme Court case on scope of § 230 of the Communications Decency Act
- Successfully moved for compassionate release under the First Step Act, resulting in reduction of client's life sentence for non-violent drug offenses to time served

Summer Associate *June 2020–July 2020*

- Drafted a motion for summary judgment on a breach of fiduciary duty claim
- Researched and wrote memoranda on a variety of legal topics, including religious accommodations for prospective employees, standing issues under ERISA, Texas receivership law, and constraints on assertion of statute of repose

Notre Dame Law Review, Notre Dame, Indiana
Executive Managing Editor *February 2020–February 2021*

- Oversaw 1L write-on competition for all journals, coordinated Law Review scoring and selection process, and organized new member training
- Coordinated day-to-day needs of the journal, including executive team meetings, journal mentorship program, social events, and election of Vol. 97 leadership

Diversity Committee Co-Chair *March 2020–March 2021*

- Led effort to audit historical membership and author diversity and survey peer institutions' practices
- Successfully led first-ever referendum to amend bylaws to expand journal membership

Notre Dame Athletics, Notre Dame, Indiana *February 2021–May 2021*
Compliance Extern

- Drafted policy for initiating preliminary investigations into reports of potential NCAA and ACC rule violations
- Reviewed athlete grant-in-aid offers and recruits' transcripts to ensure compliance with NCAA regulations

Office of General Counsel, Notre Dame, Indiana *August 2020–November 2020*
Legal Extern

- Wrote recommendations to the General Counsel and Provost regarding changes to University Title IX policy & procedures to comply with regulatory changes after conducting a survey of peer institutions' policies
- Researched and wrote memoranda on tort liability, immigration law, and students' due process & privacy rights

Pete for America (PFA), South Bend, Indiana *January 2020–March 2020*
Operational Risk Extern

- Investigated and performed political risk assessments on individuals and entities interacting with PFA, particularly DNC delegates, and advised supervisors on whether to accept, limit, or reject their involvement
- Monitored a primary caucus in Davenport, Iowa to ensure compliance with voter protection & procedural rules

Human Rights Initiative of North Texas, Dallas, Texas *July 2019–August 2019*
Legal Intern, Crime Victims Program

- Assisted with determination of clients' eligibility for status adjustment and prepared "know your rights" materials

U.S. District Court for the Northern District of Texas, Dallas, Texas *May 2019–June 2019*
Judicial Intern, The Honorable Karen Gren Scholer

- Wrote memoranda and worked on opinions regarding procedural and substantive legal issues before the Court
- Observed hearings, sentencings, conferences, and trials, including a three-day FLSA bench trial

EDUCATION

Notre Dame Law School, Notre Dame, Indiana *May 2021*
Juris Doctor, summa cum laude GPA: 3.801

HONORS: **2019 Dean's Circle Fellow,** *Top 10% of 1L Class*
Honor Roll, *All Eligible Semesters*
ACTIVITIES: **Notre Dame Law Review, Vol. 95–96**
Law School Admissions Office, *Student Ambassador*
Office of Residential Life, *Assistant Rector, Walsh Hall*
PUBLICATIONS: ***Further Harm and Harassment: The Cost of Excess Process to Victims of Sexual Violence on College Campuses*, 95 NOTRE DAME L. REV. 1785 (2020)**

Texas A&M University, College Station, Texas *May 2018*
Bachelor of Business Administration in Business Honors with a Minor in Psychology, summa cum laude GPA: 3.969

ACTIVITIES: **Business Student Council,** *President (elected)*
Kappa Alpha Theta Fraternity, *Scholarship Director*
Business Honors Program, *Peer Leader; Honor Code Development Committee Member*
George W. Bush Foundation Community Grant, *Strategic Philanthropy Discussion Leader*
Mays Business School, *Course Facilitator: "Coffeehouse Conversations"*

INTERESTS

Walking (completed the 500-mile El Camino de Santiago in Spain), reading, and spending time with Winnie (rescue mutt)

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Walsh, Hannah Elizabeth
Student ID: XXXXX9461

Date Issued: 06-JUN-2021
Page: 1

Birth Date: 01-06-XXXX

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Date Conferred: May 23, 2021
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Course Level: Law
Program: Juris Doctor
College: Law School
Major: Law

CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA	OVERALL TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA
UNIVERSITY OF NOTRE DAME CREDIT:													
Fall Semester 2018													
Law School													
LAW	60105	Contracts	4.000	A	16.000								
LAW	60308	Civil Procedure	4.000	A-	14.668								
LAW	60703	Legal Research	1.000	A-	3.667								
LAW	60705	Legal Writing I	2.000	A-	7.334								
LAW	60901	Torts	4.000	A-	14.668								
-			Total		56.337	15.000	15.000	15.000	3.756	15.000	15.000	15.000	3.756
Honor Roll													
Spring Semester 2019													
Law School													
LAW	60302	Criminal Law	4.000	A	16.000								
LAW	60307	Constitutional Law	4.000	A-	14.668								
LAW	60707	Legal Resrch & Writing II-MC	1.000	B+	3.333								
LAW	60906	Property	4.000	A	16.000								
LAW	70318	Legislation & Regulation	3.000	P	0.000								
LAW	75700	Galilee	1.000	S	0.000								
-			Total		50.001	17.000	17.000	13.000	3.846	32.000	32.000	28.000	3.798
Honor Roll													
Fall Semester 2019													
Law School													
LAW	70201	Evidence	3.000	A	12.000								
LAW	70353	Labor and Employment Law	2.000	A-	7.334								
LAW	70360	Civil Rights Law	3.000	A	12.000								

CONTINUED ON PAGE 2

UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Walsh, Hannah Elizabeth
Student ID: XXXXX9461

Birth Date: 01-06-XXXX

Date Issued: 06-JUN-2021
Page: 2

CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA	OVERALL TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA
University of Notre Dame Information continued:													
LAW	70736	Lawyering Practice Instruction	1.000	S	0.000								
LAW	73132	Information Privacy Law	2.000	A-	7.334								
LAW	75736	Lawyering Externship Fieldwork	2.000	S	0.000								
LAW	75749	Law Review	1.000	S	0.000								
-			Total		38.668	14.000	14.000	10.000	3.867	46.000	46.000	38.000	3.816
Honor Roll													
Spring Semester 2020													
During the Spring 2020 semester, a global health emergency required significant changes to coursework. Unusual enrollment patterns and grades reflect the tumult of the time.													
Law School													
LAW	70203	Remedies	3.000	P	0.000								
LAW	70315	Administrative Law	3.000	P	0.000								
LAW	70914	Health Law	3.000	P	0.000								
LAW	73313	Law of Higher Educ	2.000	P	0.000								
LAW	75738	Lawyering Practice Ext II	2.000	P	0.000								
LAW	75749	Law Review	1.000	P	0.000								
-			Total		0.000	14.000	14.000	0.000	0.000	60.000	60.000	38.000	3.816
Fall Semester 2020													
Law School													
LAW	70101	Business Associations	4.000	A-	14.668								
LAW	70307	The Freedom of Speech	3.000	A-	11.001								
LAW	70311	Federal Courts	3.000	A	12.000								
LAW	70316	Complex Civil Litigation	3.000	P	0.000								
LAW	70468	Post-Conviction Remedies	2.000	A	8.000								
LAW	75720	Corporate Counsel Ext-Fieldwrk	2.000	S	0.000								
LAW	75749	Law Review	1.000	S	0.000								
			Total		45.669	18.000	18.000	12.000	3.806	78.000	78.000	50.000	3.814
Honor Roll													
Spring Semester 2021													
Law School													
LAW	70355	Employment Discrimination Law	3.000	A	12.000								
LAW	70812	Jurisprudence	3.000	B+	9.999								
LAW	70908	Intercollegiate Athl Ext Inst	1.000	A	4.000								
LAW	73127	Corporate Compliance & Ethics	3.000	A-	11.001								
LAW	73361	Race & Policing Seminar	2.000	A	8.000								
LAW	75749	Law Review	1.000	S	0.000								

CONTINUED ON PAGE 3

UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Walsh, Hannah Elizabeth
Student ID: XXXXX9461

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Page: 3

CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA	OVERALL TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA
University of Notre Dame Information continued:													
LAW	75908	Intercollegiate Athletics Ext	1.000	S	0.000								
			Total		45.000	14.000	14.000	12.000	3.750	92.000	92.000	62.000	3.801

Honor Roll

********** TRANSCRIPT TOTALS **********

NOTRE DAME	Ehrs:	92.000	QPts:	235.675
	GPA-Hrs:	62.000	GPA:	3.801
TRANSFER	Ehrs:	0.000	QPts:	0.000
	GPA-Hrs:	0.000	GPA:	0.000
OVERALL	Ehrs:	92.000	QPts:	235.675
	GPA-Hrs:	62.000	GPA:	3.801

********** END OF TRANSCRIPT **********

CAMPUS CODES

All courses taught at an off campus location will have a campus code listed before the course title.
The most frequently used codes are:

AF	Angers, France
DC	Washington, DC
FA	Fremantle, Australia
IA	Innsbruck, Austria
IR	Dublin, Ireland
LA	London, England (Fall/Spring)
LE	London, England (Law-JD)
LG	London, England (Summer EG)
LS	London, England (Summer AL)
PA	Perth, Australia
PM	Puebla, Mexico
RE	Rome, Italy
RI	Rome, Italy (Architecture)
SC	Santiago, Chile
SP	Toledo, Spain

For a complete list of codes, please see the following website:
http://registrar.nd.edu/pdf/campuscodes.pdf

GRADING SYSTEM - SEMESTER CALENDAR

Previous grading systems as well as complete explanations are available at the following website:
http://registrar.nd.edu/students/gradefinal.php

August 1988 - Present

Letter Grade	Point Value	Legend
A	4	
A-	3.667	
B+	3.333	
B	3	
B-	2.667	
C+	2.333	
C	2	Lowest passing grade for graduate students.
C-	1.667	
D	1	Lowest passing grade for undergraduate students.
F	0	Failure
F*	0	No final grade reported for an individual student (Registrar assigned).
X	0	Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled.
I	0	Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code.
U		Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).

Grades which are not Included in the Computation of the Average

S	Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).
V	Auditor (Graduate students only).
W	Discontinued with permission. To secure a "W" the student must have the authorization of the dean.
P	Pass in a course taken on a pass-fail basis.
NR	Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances.
NC	No credit in a course taken on a pass-no credit basis.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

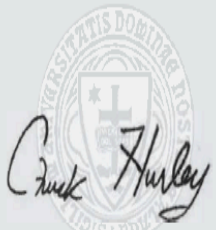
THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

TRANSCRIPT NOT OFFICIAL IF WHITE SIGNATURE AND BLUE SEAL ARE DISTORTED



CHUCK HURLEY, UNIVERSITY REGISTRAR

In accordance with USC 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without the written consent of the student. Alteration of this transcript may be a criminal offense.

COURSE NUMBERING SYSTEM

Previous course numbering systems (prior to Summer 2005) are available at the following website:
http://registrar.nd.edu/faculty/course_numbering.php

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).
The first digit of the course number indicates the level of the course.

ENGL 0 X - XXX = Pre-College course
ENGL 1 X - XXX = Freshman Level course
ENGL 2 X - XXX = Sophomore Level course
ENGL 3 X - XXX = Junior Level course
ENGL 4 X - XXX = Senior Level course
ENGL 5 X - XXX = 5th Year Senior / Advanced Undergraduate Course
ENGL 6 X - XXX = 1st Year Graduate Level Course
ENGL 7 X - XXX = 2nd Year Graduate Level Course (MBA / LAW)
ENGL 8 X - XXX = 3rd Year Graduate Level Course (MBA / LAW)
ENGL 9 X - XXX = Upper Level Graduate Level Course

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in strong support of Hannah Walsh's application to serve as your law clerk. I had the good fortune to teach Hannah in two courses during her time at Notre Dame Law School: Civil Rights and Post-Conviction Remedies. She is a wonderful person – intelligent, hard-working, and kind. She is an outstanding candidate and it is my pleasure to recommend her highly.

Hannah received an "A" in both courses she took with me. In Civil Rights, we focused primarily on § 1983 actions and surveyed other Reconstruction-Era and modern civil rights statutes. Hannah's written exam was outstanding, and put her near the top of a class of 49 students. Hannah's participation in our classroom discussions was also very strong. She was thoroughly prepared when she was "on call," and her questions and comments revealed a deep and critical engagement with the course material as a whole. It was a true pleasure to have Hannah in my class.

In my Post-Conviction Remedies seminar, we examined both the theory and practice of federal habeas corpus litigation. Hannah was an outstanding contributor to our classroom discussions, respectfully and thoughtfully engaging with the other students. Students were required to submit discussion questions based on the week's readings. Hannah's questions were invariably insightful, and revealed critical engagement with the subject matter. Students also had to submit three essays of approximately 3,000 words each, reflecting on and delving deeper into our course material. Hannah's papers were excellent. Her papers (1) critiqued the Stone v. Powell bar on Fourth Amendment claims in habeas review, (2) examined and refined procedural default rules, and (3) proposed state-level criminal justice reforms. Each of these papers was well-conceived, thoughtful, creative, and well-written. Hannah's strong research and writing skills demonstrate that she will be a productive and valued law clerk.

Hannah's practice experience at Jackson Walker LLP has deepened her knowledge and prepared her well to serve as a law clerk. It has also sparked a true enthusiasm for serving in that role. She is terrifically smart and engaging. She would be an asset to your chambers in every respect.

Overall, I have every confidence that Hannah Walsh has the talent and dedication to be an outstanding law clerk. I recommend her highly and hope that you will give serious consideration to her application. If you would like to discuss her candidacy further, please feel free to contact me at 574-631-7528, or by e-mail at mason.1@nd.edu.

Sincerely,

2
Jennifer Mason McAward
Associate Professor of Law
Director, Klau Institute for Civil and Human Rights

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:
It is my pleasure to write this letter of recommendation for Hannah Walsh, and I highly recommend her for a clerkship in your chambers. I have known Hannah since she started at Jackson Walker LLP in 2021, where, prior to taking on an executive role at a technology company co-founded by one of my former clients, I was a partner in the litigation section.

I spent significant time working with Hannah over the course of several months on a high-profile pro-bono temporary restraining order, temporary injunction, and interlocutory appeal. Despite the novelty of our constitutional claims and the fast-paced nature of the lawsuit, I believe we were successful, in no small part, because of Hannah's research and writing skills, work ethic, and motivation.

As a first-year associate, Hannah courageously volunteered to prepare the initial drafts of our motion for injunctive relief, various appellate briefs, and a response to a petition for writ of mandamus to the Texas Supreme Court. I was immediately impressed by the readability and persuasiveness of her writing style. Facing unfavorable precedent, Hannah demonstrated a unique ability to think outside of the box, creatively distinguishing precedent and searching diligently to find analogous cases. She is fastidious about the quality of her work product, extremely coachable, and eager to learn.

Hannah is also a self-starter who works well with others. On multiple occasions, she spoke directly with the clients, handling sensitive matters with poise and compassion. On another matter, also in her first year of practice, she handled calls with a large institutional client, conducted investigatory interviews, and communicated with opposing counsel with minimal supervision.

Finally, Hannah's personality will be a great addition to your chambers. She is not afraid to work long hours. In fact, her positive, can-do attitude and sense of humor makes the rigors of litigation much more enjoyable. Hannah is respected by her peers, is team-oriented, and is committed to developing her litigation skills.

I hold Hannah in the highest regards. She is truly one of the most impressive associates that I have had the pleasure of working with. I have no doubt that she will be a tremendous asset to your chambers. Please do not hesitate to contact me if you have any questions.

Respectfully,

James Carlos McFall, Esq.
james@lockerverse.com
(210) 473-7897

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to support the application of Hannah E. Walsh for a position as your law clerk. As a former dean of the Law School, I receive numerous requests for recommendations even in retirement. I write only for students with whom I have significant interaction. It is a distinct pleasure to write on behalf of Hannah.

Hannah received her undergraduate degree summa cum laude from Texas A&M in 2018 with a major in Business and a minor in psychology. She began her legal studies at Notre Dame the following fall and quickly established herself at the top of her class.

While we do not maintain class rank, at the end of her first year of studies, Hannah was designated as a Dean's Circle Fellow. This is an honor awarded only to the top 10% of the class. Hannah was able to secure an internship during the summer following her first year with Judge Karen Gren Scholer of the U.S. District Court for the Northern District of Texas. She also worked the latter part of that same summer as an intern for the Human Rights Initiative of North Texas.

Hannah's strong first year performance proved a harbinger of things to come. In May 2021 she graduated summa cum laude from the Law School with a 3.801 cumulative GPA. This is an exceptionally strong record. We have a mandatory grade distribution policy in courses of 25 or more, coupled with a required mean in all courses of 10 or more, and we have few summa graduates in any given class. Hannah completed a rigorous curriculum with a cross-section of my colleagues. A review of her transcript will show only A and A- grades save for two grades of B+.

Given the absence of grade inflation at Notre Dame and the rigorous curriculum that Hannah pursued, her academic record would be impressive if viewed in isolation. What I find particularly noteworthy, however, is that Hannah succeeded academically while also serving in several demanding positions amid the myriad challenges that students faced due to the onset of the pandemic in spring of her 2L year.

Like virtually all higher education institutions, Notre Dame physically closed and switched to all on-line courses in March 2020 to complete the 2019-2020 academic year. Students left campus for spring break, and while they were gone, received instructions not to return. Unlike many institutions, Notre Dame returned to entirely in-person classes for the 2020-2021 academic year, but only with extensive health and safety protocols that complicated the student experience.

Throughout this disruption, Hannah demonstrated great initiative and resilience without compromising her standards of excellence. She served as a legal extern in the office of University General Counsel in fall of her 3L year, and as a compliance extern for the Notre Dame Athletic Department during spring of her 3Lyear – two valuable opportunities that are much in demand. At the same time, she served as Executive Managing Editor of our flagship journal, the Notre Dame Law Review. Finally, in addition to her academic pursuits, Hannah lived and worked during her 2L and 3L years as an assistant rector in Walsh Hall, one of the University's oldest undergraduate female residence halls.

As a former vice president for student affairs here at Notre Dame, I cannot overstate the importance of assistant rector positions. In this capacity, as one of two graduate students serving under a full-time rector, Hannah helped to supervise a staff of undergraduate seniors serving as resident assistants, mentored hall government, provided oversight for major hall events, assisted in organizing academic and educational programming, handled disciplinary matters, and provided informal counseling to residents on issues relating to stress, family dynamics, and mental health. During her 3L year Hannah acquitted these responsibilities in what everyone at the University would agree was the most challenging year of undergraduate residential life on campus – at least since the Spanish Flu 100+ years ago!

Hannah was a student in my Law of Higher Education seminar during spring 2020 of her 2L year. When the University switched to all on-line classes following spring break that year, I restructured the course and course requirements for the remaining six weeks to accommodate the different pedagogy required for on-line platforms. Suffice it to say, that Hannah received the highest grade in the class based on her written submissions, as well as her knowledge of the course material demonstrated in two individual meetings that I conducted with each student by Zoom prior to the end of the semester.

I mention this because you will notice that Hannah elected to take P/F grades in her spring 2020 courses. During the spring 2020 semester instructors submitted actual grades to the registrar in accordance with our normal grading policy, but the grades were recorded as P/F if a student elected this option prior to submission of actual grades and for all courses in which the student was enrolled. My sense is that most upper-level students chose to exercise this option. In any event, although Hannah may be unaware, I know from my grading records that she not only received an A in my course, she received the highest grade in the class based on cumulative points.

Following graduation, Hannah has worked as a young associate in a litigation practice at Jackson Walker in Dallas. Her supervisors there can comment on the quality of her work, but I would be surprised if it is not excellent. My sense is that Hannah might well have pursued a judicial clerkship immediately following graduation, but for the uncertainties of the 2020-2021 academic

Patricia O_Hara - pohara1@nd.edu - 574-631-5344